



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent and late fees, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord stated that on October 7, 2009 she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant at his rental unit with another staff member present at approximately 2:00 pm.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession, a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$555.00, due on the first day of the month. The tenant paid a security deposit of \$270.00 on January 1, 2000.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 17, 2009, was served to the tenant by posting to the

door by a previous property manager. This past employee was not available to offer testimony and the landlord did not obtain a sworn affidavit from this individual. The landlord testified that the tenant last paid rent in June 2009 and that on October 27, 2009 he left \$1,060.00 in the mail slot. The landlord stated that the tenant was then issued a receipt for use and occupancy only. The landlord stated that the tenant has not paid November rent and has current rent arrears totalling \$1,715.00. The landlord is claiming late fees in the sum of \$25.00 for July to October 2009; however, the tenancy agreement does not include a clause requiring payment of this fee.

Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,715.00 for part of August and all of September, October and November 2009, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Residential Tenancy Policy Guideline #12 suggests the following in relation to service of documents:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service under oath. The person who actually served the documents must either:

- be present at the hearing, or
- have sworn an affidavit of service or a statutory declaration which is sworn before either a Notary Public or a Lawyer, and which is given to the dispute resolution officer at the hearing

A sworn affidavit of service or statutory declaration must have sworn exhibits attached to it which are copies of each of the actual document(s) served.

The person who is identified as having served the tenant with the 10 Day Notice to End Tenancy did not attend this hearing and the landlord did not supply a sworn affidavit of service; therefore, I find that the landlord has failed to prove service of this Notice.

The landlord is at liberty to make another Application for Dispute Resolution so that service may be proven, or to issue another Notice to end tenancy.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$293.70 in partial satisfaction of the monetary claim.

The claim for late fees is dismissed without leave to reapply as fees are not included as a term of this tenancy agreement.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,765.00, which is comprised of \$1,715.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$293.70, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,471.30. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord is at liberty to make application for dispute resolution so that service of the 10 Day Notice to End Tenancy may be proven, or to issue another Notice to the tenant and take appropriate action as provided by the Act.

The claim for late fee compensation is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 19, 2009.

Dispute Resolution Officer