

DECISION

Dispute Codes: O and FF

Introduction

This application was brought by the tenant seeking a remedy under the *Act* after a collection agency employed by the landlord attempted to collect from her an amount of money she did not believe she owed. The tenant also sought to recover the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether there is a remedy available to the tenant under such circumstances.

Background and Evidence

This tenancy began on July 1, 2008 under a fixed term rental agreement set to end on June 30, 2009 and subsequently becoming a month to month tenancy.

Rent was \$1,190 per month, including parking, due on the first day of the month, and the landlord held a security deposit of \$550.

During the hearing, the tenant gave evidence that she had given tenant's notice under section 45 of the *Act* on July 15, 2009 to end the tenancy on August 15, 2009 which she believed to constitute proper notice. She stated that she believed her security deposit would cover rent for the first two weeks of August.

She stated that after some adjustment, the collection agency acting for the landlord made a payment demand of \$1,007.36, an amount that included a 30 percent fee for collection services.

Analysis

As the landlord had not applied for Dispute Resolution and did not have a Monetary Order, the tenant had not had an opportunity to challenge the claims and there is no remedy within the *Act* that specifically addresses the present circumstances.

However, section 63 of the *Act* permits a hearing to provide an opportunity to the parties to settle a dispute and to record any settlement in a decision and order.

After some discussion, the tenant stated that she accepted the explanation of the dispute resolution officer that notice to end tenancy given on July 15, 2009 could not have an effective date before August 31, 2009. In all probability if the landlord made application, he would receive a monetary award to cover the last two weeks of August.

Similarly, the landlord appeared to accept the explanation that there is no provision within the *Act* that would permit the awarding of the 30 percent fee for debt collection services.

Consequently, the parties crafted the following consent agreement:

1. The landlord agrees that, in addition to the security deposit plus interest he currently holds, he will accept payment from the tenant of \$550 in full and final settlement of his claims;
2. The tenant agrees to pay the landlord \$550 by cheque dated August 1, 2010;
3. The parties agree that the landlord be awarded a Monetary Order for \$550 to perfect this consent agreement.

As the matter has been resolved by consent, and as the dispute arose as a result of the tenant's misinterpretation of section 45 of the *Act*, the tenant remains responsible for her own filing fee.

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$550 which will be satisfied by the tenant's promised payment by cheque dated August 1, 2010.

July 23, 2010