



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started on November 1, 2010 with monthly rent of \$1350.00 and the tenant paid a security deposit of \$675.00. On November 4, 2010 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord's agent testified that the tenant has paid all of November's rent and that the tenants currently owe \$1035.00 in unpaid rent for December. The landlord's agent stated that the tenants were provided with 'for use and occupancy only' receipt for the November rent payments. Prior to this hearing the landlord's agent agreed to applying the security deposit balance of \$360.00 from the unit the tenants previously occupied towards December's rent. The landlord has been charging the tenants \$50.00 for each late rent payment and this \$50.00 fee is in direct contravention with the Act. The tenants have paid a total of 7, \$50.00 late payments for a total overpayment of \$175.00. With application of the security deposit and overpayment of late fees the balance of rent owing for December is \$815.00.

The landlord's agent stated that with an apology from the tenant for past behaviour and full payment of December's rent that the tenancy could possibly continue but that it was ultimately up to the landlord. The landlord's agent is requesting an order of possession for January 31, 2011.

The tenant testified that due to his job he is often late paying the rent but that in January 2011 he hopes to make an extra rent payment and avoid repeatedly paying their rent late. The tenants stated that they would be willing to meet with the landlord's agent to try and work out a solution and ensure that their tenancy continued.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

Residential Tenancy Regulation – Section 7 Non-refundable fees charged by landlord

(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection

(2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

As the landlord has not complied with the Act in regards to late fees and has overcharged the tenants \$25.00 per late payment on 7 occasions, the tenants may deduct the \$175.00 late fee overpayment from December's rent. The landlord's agent has agreed to apply the \$360.00 security deposit due the tenants towards the \$1350.00 December rent.

As for the monetary order, I find that the landlord has established a claim for \$815.00 in unpaid rent.

The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the Landlord an **Order of Possession** effective not later than **1:00 pm, January 31, 2011**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$815.00.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's \$675.00 security deposit in partial satisfaction of the claim and I grant the landlord an monetary order under section 67 for the balance due of **\$190.00** ($\$815.00 + \$50.00 = \$865.00 - \$675.00 = \190.00)

A monetary order in the amount of **\$190.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order



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may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: December 9, 2010

Dispute Resolution Officer