



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant on January 20, 2011 and proof of service included the tenant's signature acknowledging receipt of the documents. Having been satisfied the tenant was sufficiently served, I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to compensation for late fees and NSF fees?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy began November 1, 2006 and the tenant paid a \$497.50 security deposit on October 24, 2006. The rent has increased over the years by way of Notices of Rent Increase. As of November 1, 2009 the rent has been \$1,080.00 due on the 1st day of every month.

The tenant failed to pay rent for December 2010 and January 2011. On January 5, 2011 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent outstanding of \$2,160.00 and has an effective date of January 15, 2011. The landlord testified that after serving the Notice, the tenant paid \$300.00 towards the outstanding rent. The tenant continues to reside in the rental unit.

In making this application the landlord is seeking to recover the unpaid rent, three late fees and one NSF fee. The tenancy agreement provides for the following additional term:

2. Arrears and Late Payments & NSF Cheques:

Arrears, late payment and NSF cheques are subject to a service charge of \$50.00 each after the 2nd day of the month; \$50.00 service charge must be paid by cash, certified cheque or money order.

Documentary evidence provided for this hearing included a copy of the tenancy agreement, several 10 Day Notices, three Notices of Rent Increase, proof of service of the hearing documents, and two letters received from the tenant in January 2011.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay all of the outstanding rent or dispute the Notice. Accordingly, I find the tenancy ended January 15, 2011 pursuant to section 46 of the Act.

With this decision I provide the landlord with an Order of Possession effective two (2) days after service of the Order of Possession upon the tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of \$2,160.00 from the tenant for the months of December 2010 and January 2011, less \$300.00 for the partial payment made by the tenant.

In order to charge a tenant late fees and an administrative charge for NSF cheques, such a term must be in the tenancy agreement. The Residential Tenancy Regulation limits the amount that may be charged for a late fee and administrative charge for an NSF cheque to \$25.00 each. Any term in a tenancy agreement that violates the Act or Residential Tenancy Regulation is not enforceable. Therefore, I deny the landlord's request for late fees and an NSF charge as I find the term requiring payment of \$50.00 each violates the Residential Tenancy Regulation and is not enforceable under the Act.

I award the filing fee to the landlord and I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed by the tenant. I calculate the accrued interest on the security deposit to be \$15.53.

I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – December 2010 and January 2011	\$ 2,160.00
Less: partial payment by tenant	(300.00)
Filing fee	50.00
Less: security deposit and interest	<u>(513.03)</u>
Monetary Order	<u>\$ 1,396.97</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and interest in partial satisfaction of the rent owed and the landlord has been provided a Monetary Order for the balance of \$1,396.97 to serve upon the tenant.

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: February 04, 2011.

Residential Tenancy Branch