



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original fixed term of tenancy was from August 15, 2009 to August 31, 2010. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent is \$1,050.00, and a security deposit of \$525.00 was collected near the start of tenancy.

Arising from rent which remained overdue on February 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 14, 2011. The tenant acknowledged that he received the notice, that he has subsequently made no payment toward rent, and that he continues to reside in the unit.

In addition to compensation for unpaid rent, the landlord's application includes a request for compensation in the total amount of \$84.00 for 3 separate NSF fees (3 x \$26.00). However, during the hearing, the landlord's agent testified that he could find no specific provision in the tenancy agreement for the assessment of such a fee.

Analysis

Based on the documentary evidence and the testimony of the landlord's agent, which the tenant did not dispute, I find that the landlord has established entitlement to an order of possession. The landlord's agent requested that such an order be made effective 1:00 p.m. on Sunday, April 10, 2011.

As for the monetary order, once again, based on the documentary evidence and the undisputed testimony of the landlord's agent, I find that the landlord has established a

claim of \$4,250.00. This is comprised of \$4,200.00 in unpaid rent for the combined period of January, February, March & April 2011 (4 x \$1,050.00), in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$525.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$3,725.00 (\$4,250.00 - \$525.00).

Section 7 of the Regulation addresses **Non-refundable fees charged by landlord**, and provides, in part, that a fee for the “return of a tenant’s cheque by a financial institution or for late payment of rent” must not exceed \$25.00. Further, this section of the Regulation provides that such a fee must not be charged “unless the tenancy agreement provides for that fee.” I note that the individual NSF fee claimed by the landlord is in excess of the \$25.00 permitted. Further, however, the tenancy agreement does not provide for the assessment of such a fee. In the result, this aspect of the landlord’s application is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m., Sunday, April 10, 2011**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,725.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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*.

DATE: April 6, 2011

Residential Tenancy Branch