



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OP, MN, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenant was properly served with the Notice to End Tenancy by posting the Notice to the rental unit door and by registered mail. I also accept that the tenant was served with the Application for Dispute Resolution hearing package by way of registered mail.

Despite being served, the tenants did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

Background and Findings

Order of Possession

I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant(s) has/have not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Monetary Order

Rental Arrears

Based on the undisputed evidence of the landlord I find that there are rental arrears and I therefore grant the landlord a monetary order in the sum of \$8,550.00 therefor.

Strata Fees

Based on the undisputed evidence of the landlord I find that the tenant did not pay the strata fees agreed to and those fees are now outstanding in the sum of \$2,784.00 including the costs assessed to the landlord by the Strata Corporation in filing a lien against the rental property.

Late Fees

The tenancy agreement contains a clause that the tenant shall be assessed a "...\$25.00 late fee plus \$5 dollars per day late as liquidated damages". A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. I find the \$5.00 per day fee to be a late fee. The Residential Tenancy Act limits late fees to \$25.00 per instance. I therefore find the additional charge of \$5.00 per day to be inappropriate. Further, as I do not have an accounting that details the late fees charged, I am not satisfied as to the amount owing and I will dismiss this portion of the landlord's claim.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears	\$8,550.00
Strata Fees and lien charges	2,784.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$11,384.00

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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 08, 2011.

Residential Tenancy Branch