



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") on June 19, 2012 by registered mail to the rental unit address, however the Tenant did not pick it up and it was returned to the Landlord. The Landlord's agent said she tried to contact the Tenant but was unable to do so and as a result, she delivered the returned hearing package to the Tenant's parents on July 10, 2012 to give to the Tenant. The Tenant admitted that she received a Canada Post notice to pick up the registered mail but that she did not do so. The Tenant said she recently received the details of the Hearing Notice from her parents. In the circumstances, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on August 1, 2008. Rent was \$919.00 per month from December 2010 until July 2011 and then increased effective August 1, 2011 to \$940.00 per month.

The Parties agree that the Tenant did not pay the rent for June 2012 when it was due and as a result, on June 6, 2012, the Landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 6, 2012 on the rental unit door. The Parties also agree that Tenant has not made any rent payments since she was served with the 10 Day Notice and rent for July 2012 is also now outstanding.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that on June 6, 2012, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 6, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenant is deemed to have received the Notice three days 3 later or on June 9, 2012. Consequently, the Tenant would have had to pay the amount on the Notice or if she believed the amount was not owed, apply to dispute that the Notice no later than June 14, 2012.

I find that the Tenant has not paid the overdue rent for June 2012 and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

The Landlord's agent sought to recover a total of \$2,029.00 which she admitted was for rent and fees for returned cheques. The copy of the Tenant's ledger provided by the Landlord alleges that there were 3 returned cheques from the Tenant but that she was charged NSF fees of \$25.00 on 6 occasions. Section 7 of the Regulations to the Act says that a Landlord may charge a late payment fee of no more than \$25.00 provided that the Parties' tenancy agreement contains a term to that effect. Section 7 of the Regulations also says that a Landlord may charge in addition to a late fee, the actual cost of bank charges to a Landlord for a Tenant's returned cheque. The Parties' tenancy agreement does not contain a term authorizing the Landlord to charge a late payment fee however it contains a term authorizing the Landlord to charge an administration fee of \$25.00 for a returned payment.

I find that the term of the tenancy agreement that authorizes the Landlord to charge \$25.00 for an NSF payment in the absence of any evidence that it has actually incurred bank fees for that amount is contrary to the Act and pursuant to s. 5 of the Act, it is of no force and effect. Consequently, I find that the Landlord is not entitled to recover NSF fees of \$150.00. However, I find that the Landlord is entitled to recover unpaid rent of \$940.00 for both June and July 2012 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,930.00** have been issued to the Landlord. A copy

of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: July 11, 2012.

Residential Tenancy Branch