



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

The hearing was scheduled in response to 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. The landlord's agent participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a full copy of which is not in evidence, the tenancy began on September 1, 2011. While the agreement provides for monthly rent in the amount of \$1,400.00, the landlord's agent testified that the landlord and the tenant agreed at some point in time, to a monthly rent limited to \$1,300.00. A security deposit of \$650.00 was collected.

Arising from rent which remained unpaid when due on July 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 6, 2012. The notice was served by way of registered mail, and evidence provided by the landlord includes the Canada Post tracking number for the registered mail. Subsequently, the tenant made a payment toward rent on July 24, 2012 in the limited amount of \$1,250.00, which is \$50.00 short of the full amount of rent due on July 1, 2012. Thereafter, however, the tenant made payment of rent in full for August and she continues to reside in the unit.

The landlord's agent testified that the amount of \$1,325.00 shown on the 10 day notice as unpaid when due, includes a \$25.00 fee assessed for late payment of rent. There is

insufficient documentary evidence before me that a provision for the assessment of such a fee is specifically included in the written tenancy agreement.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 6, 2012. The tenant did not pay the full amount of rent outstanding within 5 days of receiving the notice, and did not apply to dispute the notice. While the tenant subsequently paid all of the rent due for August, based on all of the foregoing, I find that the landlord has nevertheless established entitlement to an order of possession; this arises out of *late payment* of only a *limited portion* of July's rent.

In view of the fact that the tenant has paid the rental arrears for July with the exception of \$50.00, and all of the rent due for August, it is uncertain whether the landlord will choose to proceed to serve the tenant with the order of possession. With this in mind, the landlord's agent presently withdrew the aspect of the application to retain a portion of the security deposit, and may undertake to determine the disposition of the security deposit at the time when tenancy ends. In this regard, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

In the meantime, as for the monetary order, I find that the landlord has established a claim of \$100.00, which is comprised of unpaid rent for July in the amount of \$50.00, in addition to the \$50.00 filing fee.

In the absence of sufficient evidence, the application to recover the \$25.00 fee assessed for late payment of rent is hereby dismissed. In this regard, section 7 of the Regulation which addresses **Non-refundable fees charged by landlord**, provides that such a fee may be assessed only if "the tenancy agreement provides for that fee."

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenant. 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 **\$100.00**. 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*.

Dated: August 14, 2012.

Residential Tenancy Branch