



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, unpaid late fees, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 17, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The details of the dispute section of the application included a claim for late fees; therefore the application was amended to include a claim for damage or loss under the Act. The application was also amended to include a claim for unpaid August, 2012, rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and late fees?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2012; rent is currently \$1,060.00 due on the or before the first day of each month. A deposit in the sum of \$497.50 was paid at the start of the tenancy. A copy of the first and last page of the tenancy agreement was supplied as evidence.

The landlord stated that on July 2, 2012, a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 15, 2012 was served through the tenants' mail slot. Service occurred at approximately 4:30 p.m., with a witness present.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,060.00 July rent owed, within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid her rent in 2 payments, made in the latter part of June and did pay July rent owed on either July 27 or 28, 2012. When rent was paid in July a receipt for use and occupancy only was issued. The tenant has not paid August rent owed.

The landlord has claimed late fees, as provided by clause 10 of the tenancy agreement, in the sum of \$25.00 each for June and July, 2012.

The landlord claimed filing fee costs for a previous hearing. They had reached an agreement with the tenant and did not attend their hearing.

The landlord claimed registered mail costs in the sum of \$16.00.

Analysis

Section 90 of the Act stipulates that a document that is placed in the mail slot is deemed to be received on the third day. I therefore find that the tenant received the Notice to End Tenancy on July 5, 2012.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 5, 2012, I find that the earliest effective date of the Notice is July 15, 2012.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on July 15, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. The tenant paid the rent outside of the 5 day time frame; she had to pay the rent in full by July 10, 2012. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,060.00 for August, 2012.

I find, on the balance of probabilities, that the landlord has also established a claim for June and July 2012 late fees in the sum of \$25.00 each. This is based on clause 10 of the tenancy agreement.

The landlord has claimed \$16.00 of the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

The claim for past filing fee costs is dismissed. When the landlord failed to attend their past hearings they forfeited the filing fee cost. Further, I cannot make any order based on a previous decision or application.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$497.50, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,160.00, which is comprised of \$1,060.00 in unpaid August, 2012, rent, late fees of \$50.00 for

June and July, 2012 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$497.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$662.50**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2012.

Residential Tenancy Branch