



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNDS and FF

Introduction

This application was brought by the landlord on September 19, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent and loss of rent served by posting on the tenant's door on September 4, 2012.

The landlord also sought a Monetary Order for unpaid rent, late fees, and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to permit the application to be amended to request authorization to retain the security deposit in set off against the balance owed.

However, I declined to permit the landlord to amend the application to include a request for liquidated damage on the grounds that omission of the amount on the application did not meet the fundamental requirement of administrative law to fully inform the respondent of the applicant's claims against her.

Despite having been served with the Notice of Hearing sent by registered mail on September 21, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

At the commencement of the hearing, the landlord stated that the tenant had vacated the rental unit in September 2012 and a new tenancy began in the rental unit on October 1, 2012.

Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order a monetary award as requested.

Background and Evidence

This tenancy began on July 1, 2012 under a one-year fixed term agreement. Rent was \$710 per month, due on the first, and the landlord holds a security deposit of \$355 paid on June 29, 2012.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the \$710 rent that was due on September 1, 2012.

Therefore, the landlord requested the monetary award for the unpaid rent for September 2012 plus \$20 late fee as required by the rental agreement, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the full rent within five days of receiving the notice and did not make application to dispute it, and vacated the rental unit in compliance with the Notice to End Tenancy.

Section 67 of the *Act* empowers the director's delegate to determine an amount owed by one party to a rental agreement to the other.

I find that the landlord is entitled to a monetary award for the unpaid rent, late fee and filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit set off against the unpaid rent.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

September 2012 rent	\$710.00
Filing fee	<u>50.00</u>
Sub total	\$780.00
Less retained security deposit (No interest due)	- <u>355.00</u>
Total	\$425.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$425.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: October 24, 2012.

Residential Tenancy Branch