



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 25, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on October 29, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on November 3, 2013, five days after it was mailed, in accordance with section 90 of the Act; therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent, (hereinafter referred to as Landlord), testified that the Tenant entered into a written month to month tenancy that began on or around June 6, 2009. Rent was initially payable on the first of each month in the amount of \$750.00 and was subsequently increased to \$780.00 per month effective December 1, 2012. On or before June 6, 2009 the Tenant paid \$375.00 as the security deposit.

The Landlord stated that the Tenant's October 2013 rent cheque had a stop payment placed against it. He attempted to collect the rent from the Tenant by leaving notes on his door. When he attended the unit on October 27, 2013, he could see that the Tenant's possessions were still inside the rental unit; however, when he attended on

around November 2, 2013 he could see that the Tenant had moved out. He is now seeking to recover the \$780.00 unpaid rent, a late payment charge of \$25.00, and the \$40.00 bank charges relating to the stopped payment, as per the bank statement provided in their evidence.

The Landlord read section # 1 of the tenancy agreement into evidence which provides, in part, "...there will be a \$5.00 charge per day on late payments...". In closing, the Landlord requested that the security deposit be offset against any monetary award that this granted from this proceeding.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

The Landlord claims for unpaid rent of \$780.00 for October 2013, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Accordingly, I grant the Landlord's application for unpaid rent of **\$780.00**.

The evidence supports that section # 1 of the tenancy agreement provides for the Landlord to collect late payment charges. Section 7 of the Regulation stipulates that a landlord may collect a late payment charge of no more than \$25.00, if the tenancy agreement provides for such non refundable charges. Based on the foregoing, I find the Landlord has met the burden of proof and I grant their application for late payment fees of **\$25.00**.

In this case the evidence supports the Tenant placed a stop payment on his October 2013 rent cheque and in doing so cost the Landlord to suffer bank charges of \$40.00. Based on the foregoing I find it was the Tenant's intentional action which caused the Landlord to suffer the loss; therefore, I grant the Landlord's claim for bank charges in the amount of **\$40.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid October 2013 rent	\$780.00
Late payment charges	25.00
Bank fees	40.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$895.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$520.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$520.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: February 07, 2014

Residential Tenancy Branch

