



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 573697 BC LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened to deal with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for rent owed based on a Ten Day Notice to End Tenancy for Unpaid Rent.

However, at the outset of the landlord advised that the tenant vacated the unit on April 2, 2014, so an Order of Possession was no longer required.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears owed?

Background and Evidence

The tenancy originally June 2008, but the tenants changed units in November 2013. The rent is \$675.00 and a security deposit of \$380.00 is being held since November 2008.

The landlord submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, the tenancy agreement and other documents including proof of service. No detailed ledger of the tenant's rental account was submitted. However, the landlord testified that the tenant failed to pay rent owed for the months of February, March and April 2014. The landlord testified that the tenant was issued a 10-Day Notice to End Tenancy for Unpaid Rent on March 10, 2014 and did not dispute the Notice or pay the arrears. The

landlord is claiming rent owed and \$30.00 per month late fees pursuant to the tenancy agreement.

The tenant did not dispute that rent was unpaid for February and March 2014, but testified that they vacated the unit on April 2, 2014 in accordance with the Notice.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant has not paid the outstanding rent, nor did the tenant apply to dispute the Notice.

Given the above, I find that the landlord has established a total monetary claim of \$1,444.38 comprised of \$675.00 for February 2014, \$675.00 for March 2014, \$44.38 for over-holding 2 days into April 2014, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$380.95 in partial satisfaction of the claim, leaving \$1,063.43 still outstanding to the landlord.

In regard to the landlord's monetary claims for late payment fees totaling \$90.00, I find that section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 per month for late fees.

I find that the tenancy agreement contains a non-compliant term that imposes late payment fees in excess to that permitted under section 7 of the Act.

Section 5 of the Act states that parties are not permitted to avoid or contract out of the Act or the regulations, and that any attempt to avoid or contract out of the Act or the regulations is of no effect. Section 6(3)(a) of the Act also provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. Accordingly I find that the term in the tenancy agreement imposing late payment fees is not enforceable and therefore the landlord's claim for \$90.00 in late fees must be dismissed.

I hereby grant the landlord an order under section 67 for \$1,063.43. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is successful and a monetary order for rental arrears is granted along with an order to retain the tenant's security deposit.

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: April 09, 2014

Residential Tenancy Branch

