



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for orders as follows:

1. an order of possession pursuant to section 55;
2. a monetary order for unpaid rent and late fees pursuant to section 67;
3. an order to be allowed to keep all or part of the security deposit pursuant to section 38; and
4. to recover the filing fee from the tenant for the landlord’s cost of this application pursuant to section 72.

The tenant did not appear, although I waited until 1340 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord appeared and was given full opportunity to be heard, to present sworn evidence and to make submissions. The landlord indicated that the tenant may not have appeared because they had reached an earlier agreement as to the repayment of outstanding rent.

The landlord provided sworn testimony that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on 5 August 2014. The landlord gave sworn testimony and provided a Canada Post customer receipt that proves that she served the tenant with the Application for Dispute Resolution hearing package on 3 September 2014 by registered mail. I accept that the tenant was duly served with the Application for Dispute Resolution hearing package in accordance with sections 89 and 90 of the Act five days after the registered mailing, 8 September 2014.

At the hearing the landlord amended her application to ask for \$530.00 of unpaid rent, the amount currently owing, a \$50.00 late fee, and recovery of the filing fee. The landlord confirmed that she was abandoning her request for an order of possession and for an order to keep all or part of the security deposit. I granted this amendment to the application as there is no prejudice to the tenant in allowing it.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and the late fee pursuant to section 67 of the Act? Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord testified that since this application was filed the tenant has made several payments towards her outstanding rent amounts. The landlord testified that this tenancy is continuing. The landlord testifies that \$530.00 in rent remains outstanding. The landlord seeks a monetary award for a \$50.00 late fee.

The landlord provided a copy of the original tenancy agreement. The parties signed a Residential Tenancy Agreement on 26 April 2014, for a tenancy commencing 26 April 2014 for monthly rent of \$830.00. The tenancy agreement indicates that a security deposit of \$415.00 was due in advance. The tenancy agreement provides for a minimum charge for late payments in the amount of \$50.00.

The landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "10 Day Notice") for \$880.00 composed of outstanding rent from August and a \$50.00 late fee. The landlord provided testimony that she delivered the 10 Day Notice to the tenant by registered mail on 5 August 2014.

Analysis

I have reviewed all documentary evidence and accept the tenant has been deemed served with 10 Day Notice as declared by the landlord.

I accept the landlord's evidence that the tenant owes \$530.00 in unpaid rent from October and issue her a monetary award in that amount.

Therefore, I find that the landlord is entitled to a monetary order of \$530.00 for unpaid rent owing from this tenancy at this time.

Subsection 7(1) of the *Residential Tenancy Regulations* (the "Regulations") provides that a landlord may charge an administration fee of \$25.00 for late payment of rent.

Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee.

Section 5 of the Act prohibits landlords and tenants from contracting out of the Act or Regulations: terms which purport to do this are of no effect. Because the landlord contravened subsection 7 of the Regulations, the clause of the tenancy agreement that relates to the late fee is of no effect. The result is that there is no clause that provides for a late fee as required by subsection 7(2) and no late fee, of any amount, is collectable. Thus, I dismiss the landlord's monetary claim in respect of the late fee.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am making a monetary order in favour of the landlord as follows:

Rental Arrears as of 23 October 2014	\$530.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$580.00

The landlord is provided with a formal order in the above terms. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Provincial Court of British Columbia.

The landlord's application for an order of possession and retention of the tenant's security deposit is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 24, 2014

Residential Tenancy Branch

