



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by one of the landlords.

At the outset of the hearing the landlord testified the tenant vacated the rental unit within the last week or two.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on August 25, 2014 for a month to month tenancy beginning on March 28, 2014 for the monthly rent of \$1,600.00 due on the 1st of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 14, 2014 with an effective vacancy date of November 24, 2014 due to \$1,600.00 in unpaid rent; and

The landlord submits the tenant failed to pay the full rent owed for the month of November 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent to the tenant's son on November 14, 2014.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord, in addition, seeks compensation for two NSF charges (\$45.00 each) and a chargeback (\$7.50). There are no clauses in the tenancy agreement requiring the tenant to pay late fees or administrative fees for bank charges.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with both notices to end tenancy as declared by the landlord. The notice issued on November 14, 2014 is deemed to have been received by the tenant on November 14, 2014 and the effective date of the notice was November 24, 2014 pursuant to Section 53. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Residential Tenancy Regulation 7 (1) states a landlord may charge non-refundable fees for a service fee charged by a financial institution to the landlord for the return of a tenant's cheque or subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Subsection (2) states a landlord must not charge the fee described in above unless the tenancy agreement provides for that fee.

As there are no clauses identifying the requirements for the fees, I dismiss this portion of the landlords' Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,650.00** comprised of \$1,600.00 rent owed; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 19, 2014

Residential Tenancy Branch

