



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord stated that he personally served the tenant with the application and notice of hearing on April 19, 2015. I accepted the landlord's testimony regarding service of notice of the hearing, and I proceeded with the hearing in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on May 1, 2014. Rent in the amount of \$895 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$447.50. The tenant failed to pay rent in the months of March and April 2015, and the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of May 2015. The landlord has claimed unpaid rent and \$30 per month in late fees.

The Landlord's evidence included the following:

- a copy of a residential tenancy agreement, signed by the tenant and the landlord on April 18, 2014, confirming:
 - monthly rent of \$895 due on the first of each month;
 - late fees of \$30 per month; and
 - the landlord received a security deposit of \$447.50;
- copies of multiple 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, and proof of service documents for the notices; and
- a copy of the Landlord's Application for Dispute Resolution, filed April 14, 2015.

Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on April 15, 2015, the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$2685 in unpaid rent and lost revenue. The Act and regulation do not permit a late fee of more than \$25, and therefore this portion of the tenancy agreement is void and the landlord is not entitled to late fees.

As the application was mostly successful, the landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to \$2735. I order that the landlord retain the security deposit of \$447.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2287.50. This order may be filed in the 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: June 1, 2015

Residential Tenancy Branch

