



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") to obtain an order of possession for cause, for a monetary order 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.

The landlord and tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that he received and reviewed the landlord's application and documentary evidence prior to the hearing. The tenant also confirmed that he did not submit any evidence in response to the landlord's application. I find the tenant was served in accordance with the *Act* as a result.

Issues to be Decided

- Is the landlord entitled to an order of possession for cause under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 26, 2015. Monthly rent in the amount of \$1,500 plus utilities is due on the first day of each month. The tenant paid a security deposit of \$750 at the start of the tenancy, which the landlord continues to hold.

The landlord confirmed that he did not serve the 1 Month Notice to End Tenancy For Cause (the “1 Month Notice”) dated September 22, 2015 until sending it by registered mail on October 26, 2015. The tenant confirmed that he received the 1 Month Notice dated September 22, 2015 on October 28, 2015, which is supported by the online registered mail tracking website information. The tenant did not dispute the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice is October 31, 2015 which automatically corrects pursuant to section 53 of the *Act* to November 30, 2015.

Regarding the landlord’s claim for \$75 in late fees, the landlord referred to the tenancy agreement which according to #26 of the tenancy agreement, indicates that a late fee of “\$50.00” may be charged for any late payment of rent.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – The tenant confirmed that he received the 1 Month Notice on October 28, 2015, and has not disputed the 1 Month Notice. Pursuant to section 47 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, which was November 30, 2015.

The tenant continues to occupy the rental unit. Pursuant to section 55 of the *Act*, **I grant** the landlord an order of possession **effective two (2) days** after service on the tenant.

Claim for late fees – This portion of the landlord’s application is dismissed without leave to reapply, as the landlord has breached section 7(1)(d) of the *Residential Tenancy Act Regulation* (the “*Regulation*”) which indicates that the maximum late fee is \$25 per month. As a result, I find #26 of the tenancy agreement to be a term that is not enforceable under the *Act*. Pursuant to section 6(3) of the *Act* a term that is inconsistent with the *Act* or *Regulation* is not enforceable. The landlord is cautioned to not charge more than what is permitted for under the *Act* or *Regulation* in the future.

The tenancy ended on November 30, 2015, the corrected effective date of the 1 Month Notice.

As the landlord’s application had merit, I grant the landlord the recovery of the **\$50** filing fee.

I authorize the landlord to deduct \$50 from the tenant's \$750 security deposit in full satisfaction of the recovery of the cost of the filing fee. As a result, I find the tenant's security deposit is now \$750.

Conclusion

The landlord's application has merit.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord's claim for late fees is dismissed.

The landlord is authorized to deduct \$50 pursuant to section 72 of the *Act* from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit is now \$700 which continues to be held by the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2015

Residential Tenancy Branch

