



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, dated July 26, 2016 (the "Application").

The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order of possession for cause; a monetary order for unpaid rent; and an order granting recovery of the filing fee.

The Landlord was represented at the hearing by J.Z., who provided her solemn affirmation. The Tenants did not attend the hearing.

The Landlord submitted Canada Post receipts confirming service of the Landlord's Application and evidence by registered mail on July 29, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants were duly served with the Landlord's Application and evidence on August 3, 2016.

On behalf of the Landlord, J.Z. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, J.Z. confirmed the Tenants vacated the rental unit on July 31, 2016. Accordingly, the request for an order of possession was withdrawn. I accept the Landlord's withdrawal and will not consider this aspect of the claim further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

Included with the Landlord's evidence package was a copy of the written tenancy agreement between the parties. It confirms a fixed-term tenancy that commenced on April 1, 2016 and was to continue until March 31, 2017. Rent in the amount of \$1,225.00 per month was due on the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$612.50. As noted above, the Tenants vacated the rental unit on July 31, 2016. The Landlord was able to re-rent the unit effective August 15, 2016.

The Landlord is seeking a monetary order for unpaid rent, NSF and late fees, and to recover the filing fee. Based on the Monetary Order Worksheet submitted, the Landlord's claim may be summarized as follows:

July 2016 rent	\$1,225.00
June 2016 parking	\$35.00
July 2016 parking	\$35.00
RTB filing fee	\$100.00
July 2016 late fee	\$25.00
July 2016 NSF fee	\$25.00
August 2016 rent	\$1,225.00
August 2016 parking	\$35.00
TOTAL:	\$2,705.00

On behalf of the Landlord, J.Z. confirmed rent has not been paid for the month July 2016 and remains outstanding.

The Landlord also seeks to recover parking fees totaling \$105.00 for June, July and August 2016, which remain outstanding.

The Landlord is also seeking to recover late and an NSF fees for July 2016.

A Statement of Account was submitted with the Landlord's documentary evidence in support of the monetary relief claimed.

Finally, the Landlord wishes to be reimbursed for the cost of the filing fee.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 67 of the *Act* empowers me to order a party to pay compensation for damage or loss to the other for failing to comply with the *Act*, the regulations or a tenancy agreement.

On behalf of the Landlord, J.Z. confirmed that July rent remains outstanding. Based on her unchallenged oral testimony and documentary evidence, I have no hesitation granting the Landlord a monetary order for rent for July 2016 in the amount of \$1,225.00.

Although there was some discussion during the hearing about lost rent from August 1-14, 2016, I find the Landlord is not entitled to recover this amount. The Landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of July 31, 2016. According to J.Z., the Tenants vacated the rental unit on the effective date.

Although the Landlord seeks to recover unpaid parking fees, the tenancy agreement submitted into evidence is silent on these charges. Accordingly, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover the parking fees claimed.

The Landlord also seeks to recover \$50.00 for late and NSF fees. Section 7 of the Regulations states:

“(1) A landlord may charge any of the following non-refundable fees:

...

(d) 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;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.”

In this case, paragraph 10 of the tenancy agreement states.

“ARREARS: Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the Landlord.”

In light of the above, I am satisfied the Landlord has demonstrated an entitlement to \$50.00 for late and NSF fees.

I find the Landlord has established a total monetary claim of \$1,375.00, comprised of a monetary award of \$1,225.00 for unpaid rent, \$50.00 for late and NSF fees, and \$100.00 for recovery of the filing fee.

The Landlord has requested to apply the security deposit (\$612.50) in partial satisfaction of the claim, which I allow. Accordingly, the Landlord is granted a monetary order in the amount of \$762.50 (\$1,375.00 - \$612.50).

Conclusion

I grant the Landlord a monetary order in the amount of \$762.50. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 15, 2016

Residential Tenancy Branch