



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on December 22, 2008. A tracking number was provided. The Canada Post website shows the mail was returned to the sender on January 12, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

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; for a monetary Order for late and NSF fees; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that the tenant was required to pay monthly rent of \$653.31 and that he paid a security deposit of \$295.00 on August 01, 2006.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 17, 2008, was posted on the

front door of the rental unit on December 04, 2008. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that the Tenant still owes \$25.00 in rent from November of 2008; \$653.31 in rent from December of 2008; and \$653.31 in rent from January of 2009.

The tenancy agreement shows that the Tenant agreed to pay a \$25.00 fee whenever the rent is paid late and whenever his cheque is returned to the landlord due to insufficient funds. The Agent for the Landlord stated that the Tenant's check was returned, due to insufficient funds, in October and November, for which the Landlord is claiming compensation in the amount of \$50.00. The Agent for the Landlord stated that the Tenant was late paying rent in November and December, for which the Landlord is claiming compensation in the amount of \$50.00

Analysis

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on December 17, 2008, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective on January 31, 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$25.00 for November of 2008, and that the Landlord is entitled to compensation in that amount.

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The Agent for the Landlord applied for two late payment fees of \$25.00, due to the fact that the Tenant was late paying rent in November and December. The Tenant did agree to pay a late payment fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. I find that the Landlord is entitled to late fees of \$50.00.

The Agent for the Landlord applied for an administration fee of \$25.00 for processing two NSF cheques, which were returned by the financial institution. The Tenant did agree to pay this fee in the tenancy agreement, as is required by section 7 of the Residential Tenancy Regulation. I find that the Landlord is entitled to administration fees of \$50.00 for two returned cheques.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$304.56, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on January 31, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,481.62, which is comprised on \$1,331.62; \$50.00 in late fees; \$50.00 in NSF fees; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$304.56, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,177.07. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: January 22, 2009