



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNSD, MNR, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards her monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that she served the Tenant with the Notice of Hearing documents by handing the documents to the Tenant at the rental unit on March 16, 2011, at 5:30 p.m. with a witness present.

I accept the Landlord's affirmed testimony that she personally served the Tenant with the Notice of Hearing Package on March 16, 2011. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in his absence.

Preliminary Matters

The Landlord testified that the Tenant moved out of the rental unit on March 20, 2011, and the Landlord has taken back possession of the rental unit. Therefore, the Landlord's application for an Order of Possession is dismissed.

The Landlord testified that the Tenant's third party cheque dated February 7, 2011 for February rent and the security deposit was returned to her "signature required". She stated that therefore, the Tenant did not pay a security deposit. Therefore the Landlord's application to apply the security deposit towards her award for unpaid rent is dismissed.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order for unpaid rent for the months of February and March, 2011, and for NSF and late fees?

Background and Evidence

The tenancy began on January 31, 2011. Monthly rent was \$1,100.00 per month, due in advance on the last day of each month. The Tenant provided rent by third party cheques, both of which were returned to the Landlord because of problems with the signature. The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by personally handing the document to the Tenant on March 10, 2011, at the rental unit.

An addendum to the tenancy agreement contains a provision for NSF and late fees, as follows:

- All late payments accrue a late charge of 5% of the rent on the first overdue day, and \$20.00 per additional day overdue;
- All returned cheques or NSF payments are subject to a service charge of 5% of the rent payment.

Analysis

The Landlord provided copies of the returned cheques and Returned Item Advice from the bank.

Based on the undisputed testimony of the Landlord and the absence of any evidence to the contrary from the Tenant, the Landlord has established her claim for unpaid rent for the months of February and March, 2011.

Section 7 of the Residential Tenancy Regulations allow for late fees and NSF fees, as follows:

- A service fee **charged by a financial institution** to a landlord for the return of a tenant's cheque; or

- The landlord may charge an **administrative fee of up to \$25.00 for cheques returned by the financial institution or for late payment of rent if there is a provision in the tenancy agreement** for this administrative fee.

In this case, the Landlord is seeking to recover amounts that are contrary to the provisions of the Act (totalling \$230.00 for February's fees and \$270.00 for March's fees). Parties cannot contract outside the Act. The Landlord's bank issued a Returned Item Advice which does not indicate that the Landlord was charged any service fee for the return of the Tenant's third party cheques. Therefore, this portion of the Landlord's application is dismissed.

The Landlord has been partially successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$2,250.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 18, 2011.

Residential Tenancy Branch