



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing by registered mail. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began June 1, 2010 with monthly rent of \$750.00 and the tenant paid a security deposit of \$375.00.

On January 5, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord stated that the tenant did not pay the December 2011 rent in full and owes a balance of \$150.00 and a \$25.00 late fee. The landlord stated that the tenant has also not paid the \$750.00 January 2012 rent and \$25.00 late fee. The landlord stated that when the tenant made a \$400.00 payment on January 20, 2012 that the landlord provided the tenant with a receipt stating 'for use and occupancy only'. The landlord in this application is seeking \$1000.00 compensation for unpaid rent and late fees.

The landlord stated that the tenant gave 30 days written notice on December 31, 2011 that she would be vacating the rental unit. The tenant's notice to the landlord also states that the tenant will pay the account in full once monies for a student loan are received however the rent remained unpaid at the end of the tenancy.

The landlord stated that they did not apply for an order of possession and will be allowing the tenant to remain in the rental unit January 31, 2012 which is the effective end of tenancy date per the tenant's notice to vacate.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to a monetary order for unpaid rent and late fees.

Accordingly I find that the landlord is entitled to a monetary order for \$950.00.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$950.00 in unpaid rent and late fees. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$375.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$675.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 30, 2012

Residential Tenancy Branch