



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC / OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the tenant for cancellation of a notice to end tenancy / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement; ii) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee.

The landlord participated in the hearing and gave affirmed testimony. Despite the landlord's in-person service of the application for dispute resolution and notice of hearing (the "hearing package") on February 13, 2012, and despite scheduling of the hearing in response to applications by both parties, the tenant did not appear.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from February 1, 2011 to January 30, 2012. Thereafter, the agreement provides that tenancy will continue on a month-to-month basis. Monthly rent of \$800.00 in combination with utilities of \$75.00 are payable in advance on the first day of each month. A security deposit of \$400.00 was collected. By way of addendum to the written tenancy agreement, a \$50.00 fee is assessed for either late payment of rent or NSF cheques.

The landlord issued 4 separate 10 day notices to end tenancy for unpaid rent, each dated February 2, 2012. All of the notices were served to the tenant's front door on that same date. A copy of each notice was submitted in evidence. Rent / utilities shown as overdue on the respective notices is as follows:

November 1, 2011: \$475.00

December 1, 2011: \$875.00
January 1, 2012: \$875.00
February 1, 2012: \$875.00

Subsequently, the tenant made no further payment toward rent and the tenant vacated the unit on February 18, 2012 without providing a forwarding address.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with 4 separate 10 day notices to end tenancy for unpaid rent dated February 2, 2012. Although the tenant filed an application to dispute the notices within 5 days of receiving them, she did not pay any portion of the outstanding rent within 5 days of receiving them. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$3,250.00. This is comprised of unpaid rent in the total amount of \$3,100.00, as set out above, in addition to \$100.00 arising from 4 fees assessed for late payment of rent (4 x \$25.00) [see section 7 of the Regulation below], and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$400.00 and I grant the landlord a monetary order for the balance owed of \$2,850.00 (\$3,250.00 - \$400.00).

Despite the provision in the addendum to the tenancy agreement concerning the assessment of a \$50.00 fee for either late payment of rent or NSF cheques, section 7 of the Regulation which addresses **Non-refundable fees charged by landlord**, provides in part:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent.

The tenant's application is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,850.00**. This order may be served on the tenant, filed in the Small Claims Court 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: February 27, 2012.

Residential Tenancy Branch