



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant in person on August 2, 2012 with the Application and Notice of Hearing (the "hearing package"). The Landlord said she made a recording of this event but she did not provide a copy of the recording as evidence at the hearing. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?

Background and Evidence

This fixed term tenancy started on November 15, 2011 and expires on October 30, 2012. Rent is \$1,200.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenant gave her two rent cheques in payment of July 2012 rent however both of them were returned unpaid. Consequently, the Landlord said she served the Tenant in person on July 24, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 24, 2012.

The Landlord said she was able to cash the Tenant's post-dated rent cheque for August 2012 and issued the Tenant a receipt "for use and occupancy only." The Landlord said rent for July 2012 is still unpaid. The Landlord also sought to recover three late payment or NSF fees of \$45.00 each pursuant to a term in the Parties' tenancy agreement to that effect. The Landlord said the Tenant has also not paid for cable pay per view movies she ordered in the amount of \$20.00.

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 either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a 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 will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on July 24, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the rent arrears shown on the Notice or (if the amount was not owed) apply to dispute that amount no later than July 30, 2012 (given that the 29th fell on a non-business day). I find that the Tenant did not pay the overdue rent within the 5 days granted under s. 46(4) of the Act and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for July 2012 in the amount of \$1,200.00 as well as the \$50.00 filing fee for this proceeding.

The Landlord sought to recover 3 late payment or NSF fees of \$45.00 each pursuant to a term of the tenancy agreement to that effect. However, section 7 of the Regulations to the Act says that a Landlord may charge a late payment fee of no more than \$25.00 provided that the Parties' tenancy agreement contains a clause to that effect. Section 7 of the Regulations also states that a Landlord may charge (in addition), the actual bank charges they incur for an NSF cheque however the Landlord must provide evidence that they were charged that amount by their bank. I find that the term of the Parties' tenancy agreement regarding late payment fees contravenes the Regulations to the Act and pursuant to s. 5 of the Act it is of no force and effect. In the absence of any evidence that the Landlord incurred bank charges for 3 NSF cheques, that part of her application is dismissed without leave to reapply. In the absence of any evidence to the contrary from the Tenant, I find that she is responsible for cable pay per view charges of \$20.00 based on the cable invoices provided by the Landlord.

I find that the Landlord's application for a loss of rental income for September 2012 is premature and it is dismissed with leave to reapply.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,270.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: August 29, 2012.

Residential Tenancy Branch