Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the "Act") to hear this matter and decide the issues.

The Landlord's agent gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord's agent testified that the Tenant abandoned the rental unit some time in mid February, 2009. The Landlord's agent therefore withdrew the Landlord's application for an order of possession.

Issue(s) to be Decided

This is the Landlord's application for a Monetary Order for unpaid rent, to retain the security deposit and recover the filing fee from the Tenant.

Background and Evidence

Landlords' evidence

The Landlord's agent testified that the Tenant was personally served with the Notice to End Tenancy at Tenant's residence on February 5, 2009 at 2:55 p.m.

The Landlord's agent testified that the Tenant was personally served with the Landlord's Application for Dispute Resolution and hearing package at the Tenant's residence on February 13, 2009 at 3:00 p.m.

The Landlord's agent provided the following oral testimony and written evidence:

- The Tenant entered into a written tenancy agreement with the Landlord, a copy of which was provided to the case file.

- The tenancy started on May 1, 2006.

- At the end of the tenancy, the monthly rent was $805.74. Rent was due on the first day of the month.

- The Tenancy Agreement provides for a $25.00 late fee for late payment of rent.

- The Landlord provided a copy of a re-payment schedule agreement, signed by the Tenant, dated June 2, 2008. On June 2, 2008, the Tenant was in arrears for a total of $2,628.00.

- The Landlord provided a copy of the Tenant's ledger, showing when payments were paid, how much was paid, and calculating a running total. The ledger indicates that the Tenant failed to make payments as agreed in the re-payment schedule. The Landlord testified that the Tenant's arrears totaled $6,071.48 on March 1, 2009. The Landlord asked for an additional $25.00 late fee for March, 2009, non payment of rent.

- The Tenants paid a security deposit in the amount of $375.00 on May 1, 2006.

- The Landlord testified that the rental unit was extensively damaged and is currently not rented.

The Landlord's agent asked for a monetary order to include loss of rent for the month of March, 2008.

Analysis

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice to End Tenancy. Service was effected on February 5, 2009, and the effective end to the tenancy is therefore February 15, 2009.

The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the notice and is conclusively presumed to have accepted that the tenancy ended effective February 15, 2009.

I accept the Landlord's agent's testimony that the Tenant was duly served with the Notice of Hearing Package and Application for Dispute Resolution on February 13, 2009. Despite being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

The Landlord has established its monetary claim for rent arrears and late fees to an including February, 2009, in the amount of $5264.74.

The Application that the Landlord served on the Tenant did not include a claim for damages for loss of rent. The Landlord gave evidence that the Tenant abandoned the rental unit in mid February, 2009. The Landlord did not provide corroborative evidence that the rental unit could not be re-rented for March, 2009. Therefore, I decline to award damages for loss of March, 2009 rent. The Landlord has leave to apply for damages for loss of March, 2009 rent on a separate application.

Pursuant to Section 72 of the Act, the Landlord may apply the security deposit, together with any accrued interest thereon, towards its monetary order.

The Landlord has been successful in its application and are entitled to recover the filing fee in the amount of $100.00 from the Tenant.

I therefore make a monetary order in favour of the Landlord the amount of $4,978.09, calculated as follows:

Unpaid rent and late fees to and including February1, 2009:	$5,265.74
Recovery of filing fee	$100.00
Less security deposit and interest of $12.65	<$387.65>
TOTAL	$4,978.09
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<u>Conclusion</u>

I grant the Landlord a monetary order for $4,978.09 against the Tenant. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlord is at liberty to apply for damages for loss of rent for the month of March, 2009.

March 27, 2009

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