



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on January 26, 2009. A receipt with a tracking number was submitted as evidence. The Canada Post website shows the mail was not picked up by the recipient. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is to a monetary Order for unpaid rent; to keep all or part of the security deposit and loss of rental income; to retain the security deposit and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 01, 2008, 2009; that the Tenant is required to pay monthly rent of \$835.00; and that the Tenant paid a security deposit of \$417.50 on October 24, 2008.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 15, 2009, was posted on the

front door of the rental unit on January 02, 2009. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice. The Agent for the Landlord stated that the Tenant advised the Landlord, by telephone on January 28, 2009, that she had vacated the rental unit.

The Agent for the Landlord stated that the Tenant still owes \$835.00 in rent from January of 2009.

The Landlord is also seeking compensation for loss of revenue for the month of February, as the rental unit is still vacant. The Agent for the Landlord stated that the rental unit has been advertised on their "rental board" inside of their office and that it "may" be on their website. The Landlord submitted no evidence to show that the rental unit had been advertised in a newspaper.

Analysis

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 15, 2009, pursuant to section 46 of the *Act*, and that she did vacate the rental unit on, or before, January 28, 2009.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$835.00 for January of 2009, and that the Landlord is entitled to compensation in that amount.

Section 7(2) of the *Act* requires landlords who are claiming compensation for damage or loss to do whatever is reasonable to minimize that damage or loss. In these circumstances, I am not satisfied that the Landlord made reasonable efforts to find a new tenant, and I dismiss the Landlord's application for compensation for loss of revenue for the month of February. In reaching this conclusion, I was strongly influenced by the absence of evidence that shows that the Landlord made no efforts to find a new tenant, other than posting it at locations that are only available to people who are initiating contact with the Landlord. In these circumstances, I find there is an onus on the Landlord to be more proactive in their attempts to find new tenants, including placing advertisements in local newspapers or other places that are likely to attract tenants.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$418.68, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$885.00, which is comprised on \$835.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$418.68, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$416.32. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 9, 2009
