

Decision

Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that the Tenants moved into the rental unit approximately one week before July 15, 2008, although she can not recall the exact date. The female Tenant stated that they moved into the rental unit two or three days before July 15, 2008, although she can not recall the exact date.

The Landlord stated that the parties have a written tenancy agreement that establishes that the Tenants were required to pay monthly rent of \$700.00. The female Tenant stated that the parties have a written tenancy agreement that establishes that the Tenants were required to pay monthly rent of \$500.00.

The Landlord stated that the parties verbally agreed that the Tenants were not required to pay rent until August 15, 2008 in exchange for cleaning the rental unit and making repairs to the rental unit. The female Tenant stated that the Tenants were not required to pay rent until September 15, 2008 in exchange for cleaning the rental unit and making repairs to the rental unit.

The Landlord and the Tenants agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 23, 2008, was posted on the front door of the rental unit on December 02, 2008. 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 Landlord stated that the Tenants moved out on January 14, 2009. The female Tenant stated that they moved out of the rental unit on January 08, 2009 or January 09, 2009.

The Landlord stated that the Tenants still owe \$700.00 in rent, which was due on August 15, 2008. The female Tenant stated that they were not required to pay rent for the period between August 15th and September 14th.

The Landlord stated that the Tenants paid \$350.00 in rent on September 15, 2008, but that they still owe \$350.00 in rent for the period between September 15th and October 14th. The female Tenant stated that they paid \$350.00 in rent of September 15, 2008, but that they still owed \$150.00 in rent for the period between September 15th and October 14th.

The Landlord stated that the Tenants paid \$700.00 in rent on October 16, 2008 for the period between October 15, 2008 and November 15, 2008. The female Tenant stated that \$150.00 of the \$700.00 paid on October 16, 2008 was for the outstanding rent from September; \$500.00 was for rent for the period between October 15, 2008 and November 15, 2008, and \$50.00 was paid in advance for the rent due on November 15, 2008.

The Landlord stated that the Tenants still owe \$700.00 in rent, which was due on November 15, 2008. The female Tenant stated that they paid \$450.00 on November 15, 2008 which, when combined with the \$50.00 overpayment made on October 15, 2008, means that their rent for the period between November 15, 2008 and December 14, 2008 had been paid in full.

The Landlord stated that the Tenants still owe \$700.00 in rent, which was due on December 15, 2008. The female Tenant stated that the Landlord verbally advised them the house had been sold; that the Tenants needed to vacate the rental unit; and that the Tenants were not required to pay rent for the period between December 15, 2008 and January 14, 2009. The Landlord stated that she did not tell the Tenants they were not required to pay rent for this period.

The Landlord and the Tenants agree that rent payments were always made in cash, for which the Tenant was issued receipts. The Landlord stated that she has receipts for the rent payment of \$350.00, made on September 15, 2008, and for the rent payment of \$700.00, made on October 16, 2008. The female Tenant stated that she has rent receipts, signed by the Landlord, for the rent payment of \$350.00, made on September 15, 2008, the rent payment of \$700.00, made on October 16, 2008, and the rent payment of \$450.00, made on November 15, 2008. Neither party submitted copies of the receipts in evidence.

Once both parties stated they had no more relevant evidence to present at the hearing, they were advised that they were each being provided with the opportunity to submit copies of rent receipts and a copy of their written tenancy agreement to the Residential Tenancy Branch and to the other party, via registered mail, prior to February 08, 2009. The parties were also advised that they had the opportunity to provide a written rebuttal of the evidence served by the other party to the Residential Tenancy Branch prior to February 28, 2009, a copy of which must be served on the other party via registered mail.

The Tenants did not submit any evidence after the hearing.

On February 03, 2009, the Landlord submitted a copy of a tenancy agreement that indicates the Tenants agreed to pay monthly rent of \$700.00, which is due on the fifteenth day of the month. There is a notation on the tenancy agreement that indicates that the parties had a verbal agreement that rent would not be payable until September 15, 2008. The date on this notation is crossed out and replaced with a notation that indicates that rent would not be payable until August 15, 2008. This notation appears to be initialled by the Landlord but not the Tenants.

On February 03, 2009, the Landlord submitted a copy of a rent receipt for \$700.00, which was dated October 16, 2008, and a copy of a rent receipt for \$350.00, which was dated September 15, 2008.

Analysis

The tenancy agreement establishes that the tenancy began on July 15, 2008 and that the Tenants were required to pay monthly rent of \$700.00. There is a notation on the tenancy agreement, establishes that rent was not payable until September 15, 2008.

The notation was amended at some time to indicate that rent was not payable until August 15, 2008.

I find that the Landlord entered into a verbal agreement, at some time, to allow the Tenants to occupy the rental unit until September 15, 2008 without paying rent. In reaching this conclusion, I was strongly influenced by the notation on the tenancy agreement that appears to be initialled by the Landlord. At the hearing the Tenants stated that they understood that they were not required to pay rent until September 15, 2008. On this basis, I find that the parties had an understanding that rent was not due until September 15, 2008.

Although the notation on the tenancy agreement has been amended to show that the Tenants were required to start paying rent on August 15, 2008, I find there is insufficient evidence to establish that the Tenants agreed to this amendment. In reaching this conclusion, I was strongly influenced by the fact that the amendment was not initialled by the Tenants. As the Landlord has not established that the Tenants agreed to amend the agreement regarding date that rent is due, I find that the Tenants were not required to pay rent until September 15, 2008. On this basis, I dismiss the Landlords application for unpaid rent for the period between September 15, 2008 and October 14, 2008.

After considering the contradictory testimony regarding the amount of monthly rent payable during this tenancy, I find that the Tenants were required to pay monthly rent of \$700.00. In reaching this conclusion I was strongly influenced by the written tenancy agreement, which was signed by both Tenants, that indicates the monthly rent was \$700.00.

As the Landlord and the Tenants agree that the Tenants paid \$350.00 in rent on September 15, 2008, I find they still owe \$350.00 in rent for the period between September 15, 2008 and October 14, 2008.

As the Landlord and the Tenants agree that the Tenants paid \$700.00 in rent on October 16, 2008, I find they do not owe rent for the period between October 15, 2008 and November 14, 2008.

I favour the Landlord's evidence that the Tenants paid no rent for the period between November 15, 2008 and December 14, 2008 over the Tenants' evidence that they paid \$450.00 for that period. In reaching this conclusion I was strongly influenced by the fact that the Tenants did not submit a receipt for the payment they allegedly made, although at the hearing they stated they were in possession of a receipt for that payment. Conversely, the Landlord submitted copies of receipts for the two payments made on September 15, 2008 and October 16, 2008, which indicates that receipts were provided when payments were made. On this basis, I find that no rent was paid for the period between November 15, 2008 and December 14, 2008, and that the Tenants owe \$700.00 in rent for that period.

As the Landlord denied telling the Tenants they were not required to pay rent for the period between December 15, 2008 and January 14, 2009, I find that the Tenant submitted insufficient evidence to show that they were not required to pay rent for that period. In reaching this conclusion I was guided by the basic legal principle that requires the person who alleges a fact to prove that it is true. In these circumstances, I find that the Tenants have failed to meet this burden of proof. On this basis, I find that the Tenants owe the Landlord \$700.00 in rent for the period between December 15, 2008 and January 14, 2009.

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.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,800.00, which is comprised on \$1,750.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,800.00. 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 02, 2009