



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNDC, 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.

I reviewed the evidence filed by the Landlord prior to the Hearing. Both parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlord’s application for a Monetary Order for unpaid rent and loss under the Act, regulation or tenancy agreement; and to recover the filing fee from the Tenant for the cost of this application.

- (1) Is the Landlord entitled to a monetary order?
- (2) Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

There Tenant and the Landlord entered into a one year lease in July of 2008. The tenancy started on August 1, 2008. The Landlord provided a copy of the Tenancy Agreement into evidence.

Monthly rent was \$1,400.00, due on the first day of each month. An Addendum to the Tenancy Agreement states that electricity/hydro, telephone and cable/TV/Internet are not included in the rent.

Landlords' testimony and evidence

The Landlord testified that in a previous Dispute Resolution Hearing, the Tenant was ordered to deliver vacant possession of the rental unit to the Landlord on November 30, 2008. The Landlord stated that the Tenant did not move out of the rental unit until December 6, 2008. The Landlord testified that he began actively advertising the rental unit on November 28, 2008, and that the rental unit was re-rented for March 1, 2009, for a reduced rent of \$1,300.00.

The Landlord testified that a monetary order was granted to the Landlord at the previous Hearing for unpaid rent to and including November 30, 2008. The security deposit was applied to the Landlord's monetary claim at the previous Hearing. This Application is with respect to loss of rent for December, January and February, together with the difference between what the Landlord would have received from the Tenant and what the Landlord was able to re-rent the unit for the remaining term of the lease agreement (5 months at \$100.00 per month). The Landlord also applied for unpaid utilities; recovery of his costs for filing for a Writ of Possession; liquidated damages for re-renting the rental unit; and recovery of the filing fee. The Landlord amended his total claim to \$5,000.00.

The Landlord provided into evidence a copy of a letter, dated November 21, 2009, to the Tenant informing her that he would be claiming damages for loss of rent for the remainder of the term of the lease.

Tenant's testimony

The Tenant testified that the Landlord cashed her post-dated rent cheque for December rent on December 8, 2008, so she does not believe she owes loss of rent for December, 2008.

The Tenant testified that the liquidated damages the Landlord was claiming for re-renting the rental unit was supposed to be taken from the security deposit, in accordance with a provision of the Tenancy Agreement.

The Tenant testified that the monthly rent was too high and that she didn't think she should be liable for paying the \$100.00 a month difference between what she paid and what the new Tenant paid.

Landlord's response to Tenant's testimony

The Landlord stated that he applied the amount from the post-dated rent cheque towards partial satisfaction of his monetary order in the amount of \$2,221.67 awarded at the previous hearing.

Analysis

The Tenant stated that the rent for the rental unit was too high, but acknowledged that she had signed the Tenancy Agreement and had agreed to pay \$1,400.00 a month for the term of one year.

The Tenant signed the Tenancy Agreement and Addendum, acknowledging and agreeing that if she terminated the tenancy early, she would be liable to pay the Landlord \$400.00. This amount could have been taken from the security deposit, but the Landlord did not apply for this amount in the previous Hearing. Instead, the security deposit was used in its entirety to set-off the Landlord's monetary claim at that Hearing.

The Tenant breached a material term of the Tenancy Agreement by failing to pay rent when it was due, and the Landlord is applying for damages arising out of the breach. When a landlord chooses to sue a tenant for loss of rent over the balance of the term of the tenancy, he must put the tenant on notice of his intent to do so. In this case, the Landlord provided the Tenant with notice of his intent on November 21, 2008, when she was still occupying the rental unit. The remaining term of the tenancy was 8 months.

The Landlord made reasonable attempts to mitigate his loss, and I find that the Landlord is entitled to recovery of lost rent for the months of December, 2008, January, 2009 and March, 2009. The Landlord is also entitled to recover the amount sufficient to put him in the same position as if the Tenant had not breached the Tenancy Agreement. That amount is \$100.00 per month for the shortfall of rent for April, May, June and July, 2009.

Utilities were not included in the rent under the Tenancy Agreement. The Landlord provided into evidence copies of BC Hydro utility bills in support of his claim. However, the bills are for electric charges for December 6, 2008 to an including January 22, 2009. The Tenant moved out of the rental unit on December 6, 2008. I dismiss the Landlord's application for unpaid utilities.

The Landlord applied to recover his court costs for filing an Affidavit and Writ of Possession in Supreme Court. I dismiss this portion of the Landlord's claim, as this is the cost of litigation and those fees are recoverable from the Court in which they were granted.

The Tenancy Agreement provides for liquidated damages in the amount of \$400.00 if the Tenant breaks the lease term. I find that this is a reasonable amount for re-renting expenses and not a penalty. I grant this portion of the Landlord's application.

The Landlord has been largely successful in his Application, and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

The Landlord amended his application to abandon any amount over \$5,000.00. The Landlord has established a monetary claim in the amount of \$5,000.00, calculated as follows:

Loss of rental income for December, January and February:	\$4,200.00
Difference in rent for March through to July, 2009:	\$500.00
Liquidated damages:	\$400.00

Recovery of filing fee:	<u>\$50.00</u>
Subtotal:	\$5,150.00
Less amount abandoned by Landlord:	<u><\$150.00></u>
TOTAL:	\$5,000.00
	=====

Conclusion

I grant the Landlord a monetary order for \$5,000.00 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.

April 22, 2009
