

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, MNDC, MND, 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 on the case file prior to the Hearing. All parties gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord AK testified that the Tenants had abandoned the rental unit on April 14, 2009. The Landlords withdrew their application for an Order of Possession.

Issue(s) to be Decided

This is the Landlords' application for a Monetary Order for unpaid rent and damages to the rental unit, to keep all of the security deposit, and recover the filing fee from the Tenants.

- (1) Are the Landlords entitled to a monetary order?
- (2) Are the Landlords entitled to keep all of the security deposit?
- (3) Are the Landlords entitled to recovery of the filing fee from the Tenants?

Background and Evidence

Service

The Landlord testified that he personally served the Tenant SG with the Notice to End Tenancy at the rental unit on February 6, 2009. The Landlord testified that he also posted a copy of the Notice to End Tenancy on the door of the rental unit on February 6, 2009, and that therefore the Tenant KS was also duly served.

The Landlord testified that he did not serve the Tenant SG with Notice of Hearing documents. The Landlord testified that he personally served the Tenant KS with the Notice of Hearing documents on February 23, 2009, at the Tenant's place of employment.

Tenant KS's testimony and evidence

The Tenant KS gave the following submissions:

- The Tenant gave the Landlord written notice of his intent to end the tenancy on August 1, 2008. The Tenant stated that he dropped the notice off at the restaurant where the Landlord works, through the mail slot, on August 1, 2008. The Tenant testified that, in this letter, he also asked the Landlord to remove him from the rental contract
- The Tenant testified that he moved out of the rental unit on September 1, 2008.
- The Tenant stated in the beginning of the tenancy, the co-tenant would pay him his half of the rent and then the Tenant would pay the Landlord. The Tenant stated that after a few months, the Tenant and the co-tenant would both pay the Landlord, by way of depositing the rent directly into the Landlord's bank account. The Tenant stated that he stopped paying rent in September of 2008.
- The Tenant KS testified that the co-tenant had another occupant living in the rental unit after the Tenant KS moved out.

- The Tenant stated that he has been living at another address since September, 2008, and provided two copies of BC Hydro bills dated September 9, 2008 and September 26, 2008, indicating his new address.

Landlords' testimony and evidence

The Landlord gave the following submissions:

- The tenancy started on July 1, 2007. The monthly rent was \$1,200.00, due on the first day of the month. The Tenants paid a security deposit in the amount of \$600.00 on July 1, 2007.
- The Tenants have paid rent for February, but not for March and April. The Landlord found the rental unit abandoned on April 14, 2009.
- The Landlord has never received written notice from the Tenant KS about his intent to move out of the rental unit on August 31, 2008. The Landlord stated that the Tenant KS remains a tenant under the tenancy agreement and applied for a monetary order against the Tenant KS.

Testimony of the Landlord's Witness

- The Landlord's Witness testified that he has seen the Tenant KS at the rental unit, but not for about two weeks. The Witness testified that the Tenant KS had two cars which were kept at the rental unit.

Tenant's answer to Witness's testimony

- The Tenant KS questioned the Witness about his identity, and stated that the Witness must be confusing him with the other room mate. The Tenant KS stated that he does not know the Witness. The Tenant KS asserted that he has not lived at the rental unit for 6 months and has not been there for 6 months.

Analysis

I accept the Landlord's testimony that he personally served the Tenant SG at the rental unit on February 6, 2008. I accept the Landlord's testimony that he posted the Notice to End Tenancy on the door of the rental unit on February 6, 2008. However, the Landlords did not proceed with their application for an order of possession, as the rental unit was abandoned in April, 2009.

I accept the Landlord's testimony that he personally served the Tenant KS with the Notice of Hearing documents on February 23, 2009.

I dismiss the Landlords' claim against the Tenant SG, as the Tenant SG has not been served with the Notice of Hearing document.

Section 44 of the Act provides that a tenancy ends if a tenant provides written notice to a landlord, in accordance with Section 45 of the Act. Section 45 of the Act provides that the tenant's notice must comply with Section 52 of the Act. Section 52 of the Act provides that in order for the notice to be effective, the notice must be signed and dated by the tenant giving the notice. The Tenant KS entered a copy of his notice into evidence. The notice is not dated. Furthermore, Section 88 of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for **the address at which the person carries on business as a landlord**; (my emphasis)
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.

The Tenant KS testified that he left his notice to end the tenancy in the mail slot at the restaurant where the Landlord is employed. The Landlords' address for business on the Notice to End Tenancy and on the Application for Dispute Resolution is the Landlords' residential address, not the business address of his employer.

Co-Tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that a landlord can recover the full amount of rent or damages from all or any one of the tenants. Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages until the tenancy agreement has been legally ended. I find that the Tenant KS did not duly serve the Landlords with written notice of end of tenancy and that therefore the tenancy agreement did not legally end in September, 2008. The rental unit was abandoned on April 14, 2009, and therefore the Landlords are entitled to recovery of rent for the months of March and April, 2009, against the Tenant KS.

The Landlords failed to prove their claim for damages in the amount of \$1,000.00 and I dismiss this portion of the Landlords' claim.

Pursuant to Section 72(2)(b) of the Act, the Landlords are entitled to apply the security deposit, together with accrued interest, towards satisfaction of their monetary claim for unpaid rent.

The Landlords have been largely successful in their claim and are entitled to recover the filing fee for the cost of their application from the Tenant KS.

I therefore make a monetary order in favour of the Landlords, calculated as follows:

Unpaid rent for March and April, 2009:	\$2,400.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$14.36	<u><\$614.36 ></u>
TOTAL	\$1,835.64

Conclusion

The Landlords' application for a monetary order against the Tenant SG is dismissed without leave to reapply.

I grant the Landlords a monetary order for \$1,835.64 against the Tenant KS. This order must be served on the Tenant KS and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

April 27, 2009
