



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNR, RR, OLC, FF, (MNSD)

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a monetary order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy for Unpaid rent and for an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided and an order that the Landlord comply with the Act. At the outset of the hearing the Landlord applied to keep the Tenants' security deposit. I find it would serve no purpose to make the Landlord re-apply for this relief and would only cause the Tenants to incur additional filing fees. Consequently, the Landlords' application is amended to include this claim

The Landlord served the Tenants with a copy of the Application and Notice of Hearing by registered mail on March 20, 2009 to the rental unit address. The Landlord said the hearing packages were returned to him which a stamp saying "Unclaimed, Return to Sender." I find that the Tenants were served as required by s. 89 of the Act with the Landlord's hearing package and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are arrears of rent owing and if so, how much?
2. Is the Landlord entitled to end the tenancy?
3. Are the Tenants entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on April 1, 2008 and ended on March 31, 2009 when the Tenants moved out. Rent was \$840.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$420.00 on April 24, 2008. The Landlord said the Tenants' rent cheque for March 2009 was returned for insufficient funds and the amount is still unpaid. Consequently, the Landlord served the Tenants with a 10 Day Notice for Unpaid Rent and Utilities dated March 5, 2009. The Landlord said he was unable to re-rent the rental unit again until May 1, 2009 and as a result, he also sought a loss of rental income for April, 2009.

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The Landlord also claimed that the rental property was maintained over the winter months such that any snow accumulations were removed from the parking area and it was sanded. In support, the Landlord provided a list of dates his contractor attended the rental property to do maintenance. The Landlord also claimed that at no time prior to the Tenants filing their application in this matter did they complain about an inability to park on the rental property.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that the Landlord is entitled to recover rent arrears for March, 2009 in the amount of \$840.00.

RTB Policy Guideline #3 (Claims for Rent and Loss of Rent) says that “in a month-to-month tenancy, if the tenancy is ended by the Landlord for non-payment of rent the Landlord may recover loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the subsequent month.” In other words, the Tenants’ failure to pay rent is a material breach of the tenancy agreement which entitles the Landlord to end the tenancy. If the Tenant then moves out and the Landlord is unable to re-rent the rental unit for the following month, he will be entitled to a loss of rental income up to the earliest date a notice (if given) by the Tenant would have taken effect. In this case, the Tenants moved out on March 31, 2009 so the earliest date the Tenants could have ended the tenancy would have been April 30, 2009. Consequently, I find that the Landlord is entitled to recover a loss of rental income for April, 2009 in the amount of \$840.00.

I find that there is insufficient evidence in support of the Tenants’ application and it is dismissed without leave to reapply. As the Landlord has been successful in this matter, he is also entitled to recover his \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants’ security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

| | |
|--------------------------|-----------------|
| March 2009 rent arrears: | \$840.00 |
| April 2009 loss of rent: | \$840.00 |
| Filing fee: | <u>\$50.00</u> |
| Subtotal: | \$1,730.00 |
| Less: Security deposit: | (\$420.00) |
| Accrued interest: | <u>(\$4.35)</u> |
| Balance Owing: | \$1,305.65 |



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Conclusion

The Landlord's application for an Order of Possession is abandoned. The Tenants' application is dismissed without leave to reapply. A monetary order in the amount of **\$1,305.65** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount of the order is not paid by the Tenants, it may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 24, 2009.

Dispute Resolution Officer