

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, MNSD, FF, MNR, SS

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. The Landlord gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlords’ application for a Monetary Order for unpaid rent and damages under the Act, to keep the security deposit and accrued interest, for an order for substituted service, and to recover the filing fee from the Tenant for the cost of this application.

Background and Evidence

Service

The Landlord testified that he personally served the Tenant with the Notice to End Tenancy at the rental unit on February 2, 2009.

The Landlord testified that he mailed the Notice of Hearing documents to the Tenant and her advocate, by registered mail, on February 27, 2009. The Landlord testified that on February 10, 2009, the Tenant gave her forwarding address as her advocate’s address. The Landlord provided two tracking numbers for the registered mail packages.

Background and Evidence

Landlord's testimony

- The tenancy started on October 15, 2008.
- Rent was \$900.00 per month, payable on the first day of the month.
- The Tenant paid a security deposit in the amount of \$450.00 in two installments: \$400.00 on October 13, 2008; and \$50.00 on October 17, 2008.
- The Tenant moved out of the rental unit on February 10, 2009, without due notice and without paying rent for the month of February.
- No move-in inspection was done at the beginning of the tenancy.
- On February 11, 2009, the Landlord offered the Tenant a date and time of February 11 at 2:00 p.m. for the move-out inspection. The Tenant did not attend for the inspection.
- On February 11, 2009, at 4:50 p.m., the Landlord offered the Tenant a date and time of February 17, 2009, at 12:00 p.m. The Tenant did not attend for the inspection.
- The Landlord executed a move-out inspection by himself on February 17, 2009, and provided a copy of the report to the case file.
- The Landlord provided a copy of the move-out inspection report to the Tenant by regular mail.
- The Landlord provided photographs into evidence, depicting the rental unit on the day of the move-out inspection.

Analysis

The Landlord applied for substituted service of the hearing documents upon the Tenant. Section 89 of the Act allows a landlord to serve a tenant “by sending a copy by registered mail to a forwarding address provided by the tenant”. The forwarding address need not be the tenant’s residential address. The Landlord testified that the Tenant gave her advocate’s address as her forwarding address. The Landlord testified that he sent the Notice of Hearing documents to the Tenant, by registered mail, to the Tenant’s advocate’s address. Therefore, the documents were duly served in

accordance with the Act and there is no need to apply for substituted service. The Landlord's application for substituted service is dismissed.

On April 14, 2009, at the request of the Tenant, this Hearing was rescheduled from April 22, 2009, to April 23, 2009.

I accept the Landlord's testimony that he mailed the Tenant the Notice of Hearing package and Application for Dispute Resolution, on February 27, 2009, by registered mail. Pursuant to Section 90 of the Act, documents served in such a manner are deemed to have been received on the 5th day after mailing the documents. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

The Landlord has established his monetary claim for rent arrears for February, 2009. The Landlord asked to retain the security deposit towards damages left by the Tenant when she moved out. However, the Landlord did not perform a move-in inspection when the tenancy began. Therefore, the Landlord's right to retain some, or all, of the security deposit under Section 38(4)(b) is extinguished. In any event, the Landlord did not provide a breakdown of expenses incurred to correct or repair the alleged damages or cleaning of the rental unit. This portion of the Landlord's claim is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and accrued interest towards partial satisfaction of his monetary order.

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

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

Rent arrears for February, 2009	\$900.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$1.47	<u><\$451.47></u>
TOTAL	\$593.53

Conclusion

I grant the Landlord a monetary order for \$593.53 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.

May 4, 2009
