

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPL, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the landlord advised that the tenant had vacated the rental unit. As an order of possession is no longer required, I consider that claim to have been withdrawn.

The landlord had originally applied for loss of rent for April, May and June. Two days prior to the hearing the landlord served on the tenant and the Residential Tenancy Branch a request to amend his application to include a claim for unpaid utilities and the cost of repairs to a door and a ceiling and to reduce his claim for unpaid rent to a claim just for the month of May. The tenant objected that because the request had been served just two days earlier, he had not had sufficient time to respond to the claim. The tenant was unable to identify what he would have submitted in response to the request for amendment if he had been given more time to respond and based his objection to the amendment on his feeling that it was unfair to amend the application at such a late hour. As there is no indication that the tenant would have submitted anything in response to the landlord's amendment had he been given more time to do so, I find that the prejudice to the tenant is minimal and I allow the claim to be amended.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as requested?

Background and Evidence

The landlord testified that the tenant was not really his tenant because originally, he had

been subletting the rental unit, which is a basement suite, from Mr. M., who had a direct contractual relationship with the landlord. At some point in late 2008 the landlord and Mr. M. ended their tenancy agreement and the tenant remained in the basement suite, paying his rent directly to the landlord. Receipts were usually issued to the tenant specifying that rent had been paid on behalf of Mr. M. However, rent in March was paid by the tenant, accepted by the landlord and a receipt issued in the tenant's name.

The parties agreed that on or about January 25, 2009 the landlord served the tenant with a 2-month notice to end tenancy on the grounds that the landlord or a close family member intended to occupy the rental unit.

The landlord testified that the tenant vacated the rental unit on May 5. The tenant insisted that he moved out of the unit on May 1. The parties agreed that during the tenancy the tenant damaged a door frame. The tenant claimed that he had repaired the door frame and provided a written statement from a party who witnessed him repairing the frame. The landlord testified that the tenant's repair was inadequate and provided a photograph taken at the end of the tenancy showing that the frame was still split. The landlord testified that he had spoken with a man who has repaired a number of door frames at a cost of \$150.00 and has arranged with this person to perform the repair at that cost.

The landlord testified that the tenants did not use the hood fan on the stove to extract heat and that as a result, the ceiling to the rental unit was damaged. The landlord provided a photograph showing an area on the ceiling above the stove where the paint was peeling. The tenant testified that he did not understand how he could have damaged the ceiling. The landlord estimated that it would cost in excess of \$350.00 to repair the ceiling.

The landlord claims \$210.00 in unpaid utilities. The landlord testified that when Mr. M. vacated the rental unit, the tenant approached him and offered him \$700.00 per month in rent if the landlord would allow him to stay. The landlord testified that he told the tenant that the rent was \$600.00 per month and that utilities were not included in the rent. The landlord told the tenant that he would have to put the utilities into his own name and the tenant did so and paid the utilities. At some point, the tenant stopped

paying the utilities. The landlord presented invoices from Terasen Gas and BC Hydro and showed that by his calculations, the tenant's 1/3 share of the utilities was \$210.00. The tenant argued that he did not agree to pay the utilities and that he could not be held liable for the utilities because he did not have a written agreement with the landlord.

Analysis

I find that the parties were in a landlord-tenant relationship. This is indicated by the fact that the tenant paid and the landlord accepted rent, that the landlord served the tenant with a 2-month notice to end tenancy thereby acknowledging him as a tenant, and the fact that the landlord turned to the dispute resolution process through the Residential Tenancy Branch, thereby attorning to the jurisdiction of the Act.

In order to establish a claim for unpaid rent the landlord must prove that he suffered a loss of rental income. Because the landlord had served the tenant with a notice to end tenancy advising that he intended to move into the rental unit and because that notice was supposed to be effective at the end of March, the landlord actually received one more month of rental income than he had anticipated. While the delay in him taking over the rental unit may have caused the landlord some inconvenience, I find that the landlord has not proven that he suffered a loss of income which he had anticipated and I deny the landlord's claim.

Because the tenant has acknowledged responsibility for the damaged door frame, I find he is liable for the cost of repairs. Based on the landlord's photograph of the door frame, it is clear that it has not been adequately repaired. I find that the landlord is entitled to recover the cost of the repairs and I accept the landlord's undisputed testimony that it will cost \$150.00 to repair the frame. I award the landlord \$150.00.

In order to recover the cost of repairing the ceiling, the landlord must prove that the tenants caused the damage to the ceiling. The landlord did not submit a copy of the condition inspection report or any other corroborating evidence to show that the ceiling was in good repair at the time the tenancy commenced. I find that the landlord has not proven that the tenants caused the damage to the ceiling and I deny the landlord's claim.

As for the claim for utilities, it is clear that the tenants assumed responsibility for the utilities during much of the tenancy as the tenants put the bills in their name and were solely responsible for the payments. Although the *Residential Tenancy Act* requires that tenancy agreements be in writing, this does not mean that a verbal agreement is not binding on the parties. I find that the tenants are responsible for 1/3 of the utility payments. I accept the landlord's undisputed evidence that \$210.00 represents 1/3 of the total utilities owing and I award the landlord \$210.00.

The landlord also seeks recovery of the \$50.00 filing fee paid to bring this application. I find that the landlord is entitled to recover that sum and I award the landlord \$50.00.

Conclusion

The landlord is awarded a total of \$410.00 which represents \$150.00 for repairs to the door frame, \$210.00 for unpaid utilities and \$50.00 for the filing fee. I grant the landlord an order under section 67 for \$410.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 22, 2009.