



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim against the tenants due to non-payment of rent. Although served with notice of this application and hearing by registered mail, the tenants did not appear for this hearing. The landlord provided proof of service of the documents for this proceeding were sent by registered mail to the male tenant.

Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. I am satisfied that one of the tenants was served with notice of this application and hearing and I proceeded with the hearing in the tenants' absence.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession due to non-payment of rent by the tenants? Is the landlord entitled to a monetary claim related to non-payment of rent by the tenants?

Background and Evidence

The parties entered into a fixed term tenancy effective January 1, 2009 for the monthly rent of \$925.00 and a security deposit of \$450.00 paid on December 30, 2008. The tenancy was to last to December 30, 2009 at which point it could revert to a month to month tenancy.

The landlord stated that she served the tenants with a 10 day Notice to End Tenancy due to non-payment of rent on May 8, 2009 through regular mail. The notice indicates that the tenants had failed to pay rent owed of \$412.50. The notice fails to indicate what date the sum of rent was owed. I also note that on the notice the landlord has marked that the notice was served in person, which is contradictory to the evidence provided during the hearing.

The landlord stated that the tenants subsequently abandoned the rental unit. The landlord stated that she was not aware that the tenants had vacated until approximately June 15, 2009.

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The landlord served the Residential Tenancy Branch and the tenants' further evidence on June 23, 2009. The landlord stated that the tenants were served by e-mail. The landlord did not provide any proof of service for this evidence and did not make a request to amend her application.

In the landlord's application for Dispute Resolution she requests the following:

- A monetary claim for outstanding rent of \$412.50 owed for May 2009;
- A \$25.00 late payment of rent fee;
- Outstanding rent owed for a previous month for the sum of \$53.75; and
- Future loss of rental revenue for the months of June, July, and August.

The total monetary claim requested by the landlord was for the sum of \$2,966.00. The landlord seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim. The landlord also seeks to retain a \$200.00 deposit she retained from the tenants for the utilities.

Analysis

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*.

I find that the landlord's application must be amended to consider the monetary claim against the one tenant only. Section 89 requires that the landlord serve both of the tenants with notification of her claim for monetary damage against them. In this case only the male tenant has been served with the landlord's application and notice of hearing by registered mail. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. However, I find that the request for a Monetary Order against both of the tenants must be amended as only one tenant has been properly served with Notice of this application. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

I have not accepted or considered the evidence submitted by the landlord for this application on June 23, 2009, as I am not satisfied that the landlord has served the tenants with this evidence as required by the principals of natural justice and administrative fairness. Although the landlord stated that she served the tenants by e-mail, she did not provide any evidence to confirm that the tenants acknowledged receiving the documents. I find that in the absence of some evidence proving that the tenants' acknowledged receiving the documents; I must find that they were not served. Section 88 of the *Act* does not contemplate service of documents by e-mail and therefore there can be no presumption that the documents were served.



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I find that the landlord has established a total monetary claim due to non-payment of rent for the sum of \$1,362.50 comprised of outstanding rent owed for May 2009, a \$25.00 late payment of rent fee and due to loss of rental income for June 2009.

I reject the landlord's request for future loss of rental income for July and August 2009. The landlord has a duty to mitigate her loss as required by section 7 of the *Act* and has provided no argument or evidence to support this claim. The landlord has also sought reimbursement for rent owed for the sum of \$53.75 but failed to provide any evidence to support this claim.

From this sum I Order that the landlord may retain the tenants' security deposit plus interest of \$450.04 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$912.46**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Section 15 of the *Act* prohibits the landlord from charging any fees as part of accepting tenants for a rental unit. Regulations 5, 6, & 7 outline the refundable, non-refundable and prohibited fees for which a landlord may or may not charge a tenant. None of the statutes or regulations allow for a landlord to charge a tenant a deposit on utilities. As a result I find that the landlord has charged the tenants a prohibited fee of \$200.00 deposit contrary to the *Act*. This sum should be returned immediately to the tenants.

Conclusion

I grant the landlord's application in part. I have issued the landlord a monetary Order due to non-payment of rent by the tenants. The other monetary requests made by the landlord have been dismissed with leave to re-apply.

Dated: July 07, 2009.

Dispute Resolution Officer