

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and loss of rent, a Monetary Order for compensation for damage or loss; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord gave the following testimony and evidence:

The rental unit is a house. The tenancy agreement was a fixed term lease. The tenancy started on November 7, 2008, for a term ending October 31, 2009. Monthly rent was \$1,500.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$1,500.00 on November 7, 2008. The Landlord provided a copy of the tenancy agreement.

At a previous hearing, the Landlord was provided with an Order of Possession for cause, effective May 31, 2009.

The Landlord personally served the Tenant with the Notice of Hearing documents for this application on June 8, 2009, at 6:00 p.m. at the rental unit, by handing the documents to the Tenant.

The Tenant paid partial rent in the amount of \$800.00 in April, 2009. The Tenant alleges that he gave the Landlord another money order in the amount of \$700.00 for April's rent, but the Landlord either did not receive it, or has misplaced it. The Tenant paid the amount of \$750.00 in May, 2009, for use and occupancy only, and the Landlord applied \$700.00 to clear up April's arrears.

In his Application for Dispute Resolution, the Landlord applied for a monetary order, to include:

- Cost of filing the Order of Possession in the Supreme Court of British Columbia along with estimated costs of bailiff's services, in the total amount of \$4,180.00;
- Loss of rental revenue in the amount of \$5,950.00, as follows: \$1,450.00 for May, and \$1,500.00 for loss of rent for each of the months of June, July and August;
- Unpaid utilities in the amount of \$279.85; and
- Recovery of the filing fee, in the amount of \$50.00.

The Landlord provided a copy of the Supreme Court Writ of Possession, court-stamped and filed June 8, 2009.

At the onset of the Hearing, the Landlord withdrew his application for the estimated bailiff's costs (\$4,000.00), as the Tenant moved out before the Landlord had engaged the services of the bailiff.

The Landlord provided a copy of the invoice from the Regional District for water and garbage services, along with a copy of the Landlord's accounting for the pro-rated

yearly utilities. The Landlord gave the Tenant this accounting on May 19, 2009, via e-mail, and asked for payment of these utilities.

The Tenant moved out of the house at the beginning of July, 2009. The Landlord is not certain of the exact date, but it was before July 3, 2009. The Tenant did not provide the Landlord with the keys to the house.

The Landlord attempted to re-rent the house by advertising it on Craigs List, and by word-of-mouth. The house is situated in a relatively remote village of 3,000 people. The Landlord received no response from interested prospective tenants from his advertising on Craigs List, but was able to find a replacement tenant via a network of friends and community word-of-mouth. He showed the house to 8 prospective tenants and has re-rented the house for October 1, 2009.

The Landlord's Witness gave the following testimony:

The Witness is the Landlord's wife. She was present when the Landlord served the Tenant with the Notice of Hearing documents on June 8, 2009. The Tenant did not say he had moved, he said it was his intention to move. At the beginning of July, 2009, all of his belongings were gone.

The Tenant gave the following testimony:

The Tenant moved out of the rental unit on June 1, 2009, leaving the keys and a few of his belongings at the rental unit. The Tenant did not personally return the keys to the Landlord. After moving out, the Tenant returned to the rental unit in early June to pick up the remainder of his belongings.

The Tenant paid the Landlord full rent for the month of April, by providing the Landlord with two money orders totaling \$1,500.00. The Landlord misplaced one of the money orders. On April 8, 2009, the Tenant provided the Landlord with a form for a duplicate

money order to replace the one the Landlord lost. It is up to the Landlord to fill out the form and wait for the replacement money order. The Tenant does not trust that the Landlord did not, in fact, already cash the money order.

The Tenant does not believe he should be responsible for paying the garbage and water bill. He paid the utilities he was responsible to pay under the tenancy agreement. Garbage and water were not identified as his responsibility.

The Tenant does not believe he should be held responsible for loss of rent because the Landlord did not do enough to advertise and re-rent the house.

The Tenant's Witness gave the following testimony:

The Witness was present in April, 2009, when the Tenant gave the Landlord the form to request a duplicate money order.

The Witness was with the Tenant when he moved on June 1, 2009.

Analysis

There was much disagreement between the parties regarding the date the Tenant moved out of the rental unit. Based on the evidence and testimony of both parties, I find that the Tenant did not completely move out of the rental unit until early July, 2009. On June 1, 2009, the Tenant filed for review of the Dispute Resolution Officer's decision regarding the Order of Possession. On June 18, 2009, the Tenant's application for review was considered and was unsuccessful. Why would the Tenant file for review if he had moved out on June 1, 2009? Furthermore, the Tenant did not give the Landlord the keys on June 1, 2009, and was present at the rental unit on June 8, 2009, when the Landlord served the Tenant with the Notice of Hearing documents. The Tenant's evidence was that he was returning to recover some of his belongings. By his own

testimony, the Tenant did not deliver vacant possession and return his keys to the Landlord on June 1, 2009.

I accept the Landlord's testimony that he did not cash a money order in the amount of \$700.00 for partial payment of April's rent. The Tenant may submit an application to Canada Post to recover the cost of the uncashed money order.

This was a term lease, due to expire on October 31, 2009. The rental unit is located in a small village, between the small towns of Sechelt and Gibsons on the Sunshine Coast. It is not located in a city, and is not easily accessible. Due to the size and location of this community, it is difficult to find tenants and I find that the Landlord took reasonable steps to mitigate his loss.

For the reasons stated above, I find that the Landlord has established his monetary claim for loss of rent in the amount of \$5,950.00.

I dismiss the Landlord's application to recover the cost of filing the Order of Possession in the Supreme Court, as this is the cost of doing business.

The Landlord withdrew his application to recover the cost of the bailiff's services, and this portion of his application is dismissed.

I dismiss the Landlord's application for unpaid utilities in the amount of \$279.85. The Tenant paid the normal utilities (i.e. heat, hot water, phone), as required under the tenancy agreement. Garbage and water fees are the responsibility of the Landlord.

I note that the Landlord accepted more than the maximum allowed security deposit, which is one half of one month's rent. Pursuant to Section 19(2) of the Act, a tenant is allowed to deduct the overpayment from rent or otherwise recover the overpayment.

Pursuant to Section 72(2)(1) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

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

The Landlord has established a monetary claim as follows:

Loss of rent	\$5,950.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$6,000.00
Less security deposit	- \$1,500.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$4,500.00

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$4,500.00 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.

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: September 18, 2009