



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, FF, O

Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding.

At the beginning of the hearing the Landlords sought to amend their claim to include compensation for damages to the rental unit and to keep a security deposit and pet damage deposit. The Landlords provided new evidence 6 days prior to the hearing in support of this claim but admitted they had not served those documents on the Tenants. Given that the Tenants have had no notice of the new claims the Landlords sought to add to their application, I did not grant their amendment application. Consequently, the Landlords may re-apply for that relief.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Are the Landlord entitled to compensation for a loss of rental income and if so, how much?

Background and Evidence

This tenancy started on February 1, 2008 and ended on or about June 13, 2009 when the Tenants moved out. Rent was \$1,650.00 per month.

The Landlords claim that the Tenants' rent cheque for June 2009 was returned for non-sufficient funds and the Tenants would not respond to e-mail or telephone messages. Consequently, on June 7, 2009, Ms. MacLeod went to the rental unit and noticed that most of the Tenants' furnishings had been removed. Ms. MacLeod said she posted a 10 Day Notice to End Tenancy on the rental unit door that day but did not hear from the Tenants again.

The Landlords said the Tenants did not pay rent for June 2009 and had rent arrears for November 2008. The Landlords also claimed that they were unable to re-rent the rental unit for another 3 months due in large part to a flea infestation in the rental unit. The Landlords said they had to hire an exterminator to do 6 treatments on the rental unit starting on June 23, 2009 and ending at the beginning of September, 2009. The

Landlords admitted that they had previously agreed to allow the Tenants to end the tenancy at the end of June 2009.

The Landlords also sought to recover NSF fees with respect to one cheque for November 2008 rent, 2 cheques for March 2009 rent and one cheque for June 2009 rent. The Tenants admitted that there were NSF cheques for November 2008 and June 2009 rent payments but claimed that they believed the March 2009 payment had been processed. The Landlords did not provide a copy of the NSF cheques as evidence at the hearing.

The Tenants admitted that rent was unpaid for November 2008 and June 2009. The Tenants argued, however, that they should not be responsible for a loss of rental income because for July 2009 because they had an agreement that the tenancy would end on June 30, 2009. The Tenants admitted that they noticed fleas “a little bit” but claimed that they purchased some sprays and had the carpet cleaned.

Analysis

I find that the Landlords are entitled to recover rent arrears for November 2008 and June 2009 in the total amount of **\$3,300.00**. The Landlords also applied to recover interest on the unpaid rent amount, however, there is no authority in the Act that allows a Landlord to recover interest and in the absence of any evidence of a term of a tenancy agreement to that effect, this part of the Landlords’ claim is dismissed.

I also find that the Landlords are entitled to recover NSF fees in the amount of **\$14.00**. In the absence of copies of the returned cheques for March 2009, I find that there is insufficient evidence to conclude there was a fee charged for them and that part of the Landlords’ claim is dismissed.

In their application, the Landlords claimed a loss of rental income for one month due to the Tenants’ “being unavailable to permit entry to show the home to prospective renters and not cleaning up the premises prior to departure causing delay in finding new renters.” At the hearing however, there was no evidence adduced about the Tenants not permitting the Landlords to enter the rental unit to show it to prospective renters. Instead, the Landlords argued that when they filed their application on June 12, 2009, they had not yet discovered the flea infestation and that this was the real reason for the unit not being re-rented for 3 months.

In the circumstances, I find that this part of the Landlords’ claim should be dismissed and dealt with when they re-apply for a loss of rental income for the other 2 months in question so that the matter can be dealt with at the same time. I also find that this is



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necessary, given that the Landlords did not give the Tenants notice that this was in issue and therefore the Tenants have not had an opportunity to respond to it. Consequently, the Landlords' application for a loss of rental income for July 2009 is dismissed with leave to reapply.

As the Landlords have been successful in this matter, they are entitled to recover their **\$100.00** filing fee for this proceeding.

Conclusion

A monetary order in the amount of **\$3,414.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order 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: September 24, 2009.

Dispute Resolution Officer