

Decision

Dispute Codes: OPR, MNSD, MNR

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to apply the security deposit towards its monetary award.

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

Preliminary Matter

At the onset of the Hearing, it was established that the Tenants have moved out of the rental unit. Therefore an Order of Possession is not required, and the Landlord's application for an Order of Possession is dismissed as withdrawn.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order, and if so, in what amount?
- (2) Is the Landlord entitled to apply the security deposit towards unpaid rent?

Background and Evidence

The Landlord's agent (the "Agent") testified that the previous manager served the Tenants with the Notice to End Tenancy by handing the document to the female Tenant on October 2, 2009. The Tenants admitted service of the Notice to End Tenancy.

The Agent testified that the previous manager had also served the Application for Dispute Resolution and Hearing package upon the Tenants, but was not certain of the date of service. The Tenants confirmed that they had been personally served with the Notice of Hearing documents on October 21 or 22, 2009.

The tenancy started on August 1, 2007. Monthly rent was \$1,350.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$675.00 on July 19, 2007.

The Agent testified that the Tenants' rent cheque for the month of June, 2009, was returned "insufficient funds". The Landlord is therefore applying for a monetary order to include unpaid rent for June, 2009, together with a late fee of \$25.00. The Agent testified that, since the Tenants had vacated the rental unit in accordance with the Notice to End Tenancy, the Landlord was amending its application to include prorated rent for October only, in the amount of \$198.98.

The Tenants testified that the previous manager had come to see them about the unpaid June rent, but that they were not convinced it had not been paid. There have been a number of different managers, and the Tenants did not want to pay rent for June twice. The Tenants testified that sometimes they paid rent in cash, and sometimes by cheque. The Tenants testified that they were never provided with receipts for rent payments. The previous manager said that he would provide the Tenants with proof that they had not paid June's rent, but he did not do so.

The Tenants testified that they went to pay October, 2009, rent on October 1st, but the manager was not in the office.

The Agent testified that he had the NSF cheque and would provide the Tenants with a copy.

Analysis

This is the Landlord's application, and as such, the onus is on the Landlord to prove its claim. The Landlord has not provided sufficient evidence to meet this burden, for the following reasons:

1. The Agent testified that he had the NSF cheque for June, 2009 in his possession, yet the Landlord did not provide a copy of the cheque in evidence.
2. The Landlord provided evidence, consisting of copies of hydro bills; a letter dated October 2, 2009; a condition inspection report; and a tenancy agreement. None of the documents provided relate to this tenancy, as the documents are for a tenancy in a different rental unit, with different tenants.
3. The Tenants testified that they attempted to pay the Landlord rent on time for the month of October, 2009, in the manner they were accustomed, but that the manager was not in his office to accept the rent payment. The Tenants testified that they were not provided with receipts for rent payments.

The Landlord's application is dismissed in its entirety, without leave to reapply. Having dismissed the Landlord's application to apply the security deposit towards their monetary award, I hereby provide the Tenants with a monetary order in the amount of \$689.79, representing return of the security deposit plus accrued interest in the amount of \$14.79.

Conclusion

The Landlord's application is dismissed without leave to reapply.

During the conference, the Agent stated that he would provide the Tenants with a copy of the NSF cheque for June, 2009. The parties may settle the matter of whether or not June's rent remains unpaid.

I hereby provide the Tenants with a monetary order against the Landlord in the amount of \$689.79. This Order must be served on the Landlord 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.

December 18, 2009

Date of Decision