



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, compensation for damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony that December 23, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The landlord testified that the mail was returned on December 28, 2009. The landlord stated that the tenant remained in the rental unit until December 31, 2009.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

As the tenant moved out of the rental unit on December 31, 2009 the landlord withdrew their request for an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to compensation for loss of rent revenue?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 17, 2008. The tenancy agreement required the tenant to pay monthly rent of 825.00; a rent increase in the allowable amount took effect December 1, 2009, resulting in monthly rent in the sum of \$855.00. The tenant paid a security deposit of \$412.50 on March 31, 2008.

The landlord provided a tenant ledger which indicates that the tenant was in constant rent arrears throughout the tenancy. From April 2008 to October 2009 the tenant accumulated arrears in the sum of \$175.00. The tenant did not pay \$125.00 in November 2009 and failed to pay \$855.00 in December, 2009.

The landlord stated that on December 8, 2009 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 18, 2009 was served by posting to the tenant's door. The tenant did not move out of the rental unit by the effective date of the Notice. The landlord stated that on January 1, 2010, there were three vacancies in the building. The landlord carries out daily advertising on a popular web site and the local city newspaper and has yet to rent out the tenant's unit. The landlord is claiming loss of January 2010, rent revenue.

Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,155.00 for the 2008 – 2009 rent arrears, and that the landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 21, 2009, pursuant to section 46 of the Act. The tenant failed to dispute the Notice and remained in the rental unit until December 31, 2009, resulting in a loss of rent revenue to the landlord for January, 2010. The landlord had applied on December 21, 2009 for an Order of possession and could not be confident that the tenant would vacate. I find that the landlord is entitled to compensation in the sum of \$855.00 for January rent.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$417.17, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$2,060.00, which is comprised of \$1,155.00 in unpaid rent, \$855.00 in loss of January 2010 rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$417.17, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,642.83**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: January 27, 2010.

Dispute Resolution Officer