

DECISION

Dispute Codes:

MNSD, MNR, FF

Introduction

This is the Landlords' application for a monetary order for unpaid rent; to apply the security deposit towards partial satisfaction of their monetary claim; 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

- Was there a tenancy agreement?
- Are the Landlords "landlords" as defined by the Act?
- Did the Tenant provide the Landlords with effective notice that he was ending the tenancy?
- Was the Tenant responsible for paying a portion of the utilities?

Background and Evidence

The Landlords and the Tenant lived together in a house (the "rental unit"). They were employees of the same employer and were laid off in April, 2009, due to lack of work. Their employer agreed to pay their rent on their behalf until they could return to work. The employer paid their rent until September 1, 2010, when the Landlords returned to work with the employer. The Tenant did not return to work with the employer.

From December 1, 2008 until April, 2009, the Tenant paid monthly rent, on the first day of each month, in the amount of \$435.00 to the Landlords, who in turn paid their landlord. The Tenant paid his portion of the security deposit in the amount of \$260.00 to the Landlords on December 1, 2008. The Landlord testified that the Tenant was responsible for his share of utilities, in the amount of \$40.00. The Tenant disputed that he owed any money for utilities.

The Landlord testified that the Tenant moved out of the rental unit in April, 2009, but that the Tenant was expected to return to the rental unit once the lay-off was over. The Landlord testified that the Tenant left some of his furniture and personal items at the rental unit. The Tenant testified that the furniture (a bed and night stand) was provided by the Landlord and did not belong to him. The Tenant testified that he moved out on April 18, 2009, and told the Landlords he was not coming back.

The Tenant testified that he did not sign a tenancy agreement, and therefore there was no tenancy agreement with the Landlords. The Tenant testified that he gave his employer notice that he was not returning to work at the end of July, 2009. The Tenant submitted that he didn't owe rent for August in any event because the employer was the tenant at the time, by virtue of the fact that the employer was paying rent.

The Landlord testified that the Tenant gave their employer notice that he would not be returning to work on August 20, 2009, but did not give the Landlord notice that he was ending the tenancy until September, 2009.

Analysis

Was there a tenancy agreement?

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, **whether written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. (emphasis added)

Although the Act requires tenancy agreements to be in writing, the definition of a tenancy includes an oral agreement respecting possession of a rental unit, use of common areas, services and facilities and licence to occupy the rental unit. The Tenant paid rent and a security deposit and lived in the rental unit. Therefore, I find that there was an oral tenancy agreement in place.

Are the Landlords “landlords” as defined by the Act?

The Act defines a landlord as follows:

"landlord", in relation to a rental unit, includes **any** of the following:

- (a) the owner of the rental unit, the owner's agent or **another person who, on behalf of the landlord,**
 - (i) permits occupation of the rental unit under a tenancy agreement, or**
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
 - (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
 - (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
 - (d) a former landlord, when the context requires this
- (emphasis added)

I find that the Landlords were landlords as defined in paragraph (a)(i) and (ii) of the definition. The Landlords collected rent and a security deposit from the Tenant and in turn paid their landlord the total rent every month.

I reject the Tenant's submission that their employer became tenants because they started paying the rent over the period of time the parties were laid off. The employer did not live in the rental unit and was paying the rent on behalf of the Landlords and the Tenant.

Did the Tenant provide the Landlords with effective notice that he was ending the tenancy?

Section 45(1) of the Act states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(4) of the Act states:

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, **a notice to end a tenancy must be in writing** and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

(emphasis added)

The Tenant did not provide the Landlords with notice in writing, and therefore I find that the Tenant did not provide the Landlords with effective notice under the Act.

Was the Tenant responsible for paying a portion of the utilities?

The Landlords claimed the Tenant owes them \$40.00 in unpaid utilities. The Tenant disputed the Landlords' claim, and stated that utilities were included in the monthly rent.

In the case of oral tenancy agreements, when both the Landlords and Tenant agree on the terms, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, it is virtually impossible to determine what the disputed term(s) were.

The Applicants, in this case the Landlords, have the onus of proving, during these proceedings, that the Tenant was responsible for paying a portion of the utilities. When the total evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I find that the Landlords have not proven this portion of their claim and it is dismissed.

I find that the Landlords have established a monetary claim for unpaid rent for the month of August, 2009, in the amount of \$435.00.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit, together with accrued interest in the amount of \$.33, towards partial satisfaction of their monetary claim.

The Landlords have been largely successful in their claim and are entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent for August, 2009	\$435.00
Recovery of the filing fee	\$50.00
Less security deposit and interest	<u>-\$260.33</u>
Total due to the Landlords after set-off	\$224.67

Conclusion

I hereby grant the Landlords Monetary Order against the Tenant in the amount of \$224.67. 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: January 15, 2010
