



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, 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 a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The landlord's Application included a request for compensation for unpaid rent and utilities only. The landlord thought a copy of the utility bill had been served to the Residential Tenancy Branch (RTB) and to the tenant. The tenant stated he did not receive a copy of the bill and there was no evidence before me that a copy of the bill had been served to the RTB.

The monetary amount claimed by the landlord includes loss of rent revenue and I have accepted the claim for loss of December 2009 rent and find the landlord made a clerical error by not checking the appropriate section of the Application.

Issue(s) to be Decided

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

Is the landlord entitled to compensation for loss of December rent paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced January 1, 2009. Rent was \$1,200.00 per month and included a term for utility payments that the landlord acknowledged was confusing. The agreement indicates that the tenants will pay all utility costs, which included consumption by a downstairs occupant. If there was a tenant downstairs the rent was to be \$1,100.00 per month, if there was no occupant downstairs, the rent would be \$1,200.00 per month, but the tenants would pay all utilities, which would include any consumption in the vacant unit downstairs. The tenancy term was fixed to end December 31, 2009; the landlord acknowledged that a new agreement would have been negotiated and that the tenants were not required to move out on December 31, 2009.

The landlord is holding a deposit paid on January 1, 2009, in the sum of \$600.00. The landlord testified that they have retained the deposit as there were damages to the rental unit. The landlord confirmed that they did not submit an Application requesting retention of the deposit, nor did they receive written permission from the tenant at the end of the tenancy to retain the deposit.

The tenant acknowledged that they moved out of the rental unit in mid-November and that rent for that month was not paid. The landlord stated that the tenant had moved out of the unit by November 22, 2009; the effective date of a 10 Day Notice to End Tenancy issued on November 13, 2009. The tenant confirmed receipt of the Notice. The landlord is claiming the loss of December rent. The landlord advertised the unit in a local newspaper and did show the unit, but it was not clean and they were not able to locate renters until January.

The landlord is claiming unpaid November rent, loss of December 2009, rent revenue and water, sewer and garbage utilities in the sum of \$776.75 from January 2009 to November 20, 2009.

Analysis

I find that the landlord is entitled to compensation for unpaid November 2009, rent in the sum of \$1,100.00. The tenants acknowledge that rent was not paid for this month.

In relation to the claim for loss of December rent revenue, I have determined, based upon the testimony and the 10 Day Notice to End Tenancy issued by the landlord, that the tenants moved out at a point in November when it would have been very difficult for the landlord to locate new tenants for the first of the month. Therefore, I find that the landlord is entitled to loss of rent revenue for December 2009 in the sum of \$1,100.00. Further, this was a fixed-term tenancy that was to end on December 31, 2009.

When making a claim the applicant must prove that the respondent breached the Act and there must be verification of the amount claimed. In the absence of service of a copy of the utility bill to either the tenants or the RTB I find that this portion of the claim is dismissed.

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

During the hearing I expressed concern related to the tenancy agreement clause referencing utility payments. The tenants were responsible for payment of utilities incurred by an occupant residing in a downstairs unit, a term that I found confusing. The landlord acknowledged that this term was confusing and this is evidenced by the Notice to end tenancy which was issued for \$1,200.00 rent owed; not the required \$1,100.00.

Section 6 of the Act determines that a term of a tenancy agreement is not enforceable if it is not expressed in a manner that clearly communicates the rights and obligations under it. A term may also be found to be unconscionable if, as defined in the Regulation, it is oppressive or grossly unfair to one party. I found the utility payment term unfair to the upstairs tenants, as they could not control the usage of utilities by the occupant who lived downstairs.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$2,250.00, which is comprised of November unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for \$2,250.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I dismiss the claim for utility costs.

The matter of the deposit is not settled as neither party has submitted an Application in relation to the deposit held in trust by the landlord.

I have included a copy of the *British Columbia Guide for Landlords and Tenants in British Columbia* for reference by each party.

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: March 24, 2010.

Dispute Resolution Officer