

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for unpaid utilities, for compensation for a loss of rental income and damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord served the Tenant with a copy of the Application and Notice of Hearing by registered mail on February 1, 2010. The Tenant confirmed that she received a notification card about the registered mail but did not pick it up. Section 90 of the Act says that a document sent by mail is deemed to have been received by the recipient 5 days later. Consequently, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act.

Issues(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?
3. Is the Landlord entitled to compensation for damages to the rental unit?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Landlord said the tenancy was a fixed term tenancy that started on September 8, 2009 and was to expire on June 30, 2010, however it ended on November 21, 2009 when the Tenant moved out. The Tenant said the tenancy was a month to month tenancy that started on September 10, 2009. The Tenant argued that because she was 15 years old at the time of entering into the tenancy agreement that it should be of no effect. Rent was \$750.00 per month payable on the 6th day of each month plus 60% of the hydro bill for the rental property. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Parties agree that the Tenant gave the Landlord (verbal) notice on November 6, 2009 that she was ending the tenancy on November 21, 2009. The Tenant said she paid the Landlord for 2 weeks of rent and told him that he could keep part of her security deposit in payment of her share of the hydro bill for the period September 24 – November 21, 2009. The Landlord said he was unable to re-rent the rental unit until December 15, 2009.

Analysis

Based on the copy of the tenancy agreement provided by the Landlord and signed by the Tenant, I find on a balance of probabilities that it was a fixed term tenancy. Section 3 of the Act says that a tenancy agreement entered into with a minor (ie. under 19 years of age) is enforceable against the person.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Even if the tenancy was a month to month tenancy as the Tenant argued, s. 45(1) of the Act requires that a Tenant give **one clear months notice in writing**. Consequently, the earliest the Tenant could have ended the tenancy (had she given written notice on November 6, 2009) would have been January 5, 2010. In other words, because rent was payable on a monthly basis and due on the 6th of each month, the only option(s) available to the Tenant would have been to give written notice on October 5, 2009 to end the tenancy on November 5, 2009 or alternatively to give written notice on November 5, 2009 to end the tenancy on December 5, 2009.

Although the Tenant said she tried to help the Landlord find another tenant, I find that the Landlord still lost rental income for the period, November 22 – December 14, 2009. However, the Landlord has only sought to recover lost rental income 2 weeks, and as a result, I find that he is entitled to recover \$375.00. The Tenant did not dispute that there were unpaid utilities of \$191.75 and as a result, I find that the Landlord is also entitled to recover that amount.

The Tenant argued that she should not be responsible for the \$50.00 filing fee paid by the Landlord for this application because she told the Landlord she would pay the unpaid utilities when she could. However, s. 46(6)(b) of the Act states that utility charges are due and payable 30 days after a demand for payment is made for them. The Tenant admitted that she received a demand for payment of the utilities on or about December 7, 2009. Consequently, I find that the Landlord was entitled to bring his application to recover the unpaid utilities on January 29, 2010 and is entitled pursuant to s. 72 of the Act to recover the filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial satisfaction of his claim. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$375.00
Unpaid utilities:	\$191.75
Filing fee:	<u>\$50.00</u>
Subtotal:	\$616.75
Less: Security deposit:	(\$375.00)
Accrued interest:	<u>(\$0.00)</u>
Balance Owing:	\$241.75

Conclusion

The Landlord's application for compensation for damages to a sofa bed is withdrawn. A monetary order in the amount of **\$241.75** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: March 15, 2010.

Dispute Resolution Officer