

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Landlord claimed that the tenancy has ended and as a result, he abandoned his application for an Order of Possession.

The Landlord said he served the Tenant in person on February 2, 2010 with a copy of the Application and Notice of Hearing. Based on the evidence of the Landlord, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on or about September 1, 2009 and ended on or about February 15, 2010 when the Tenant moved out. Rent was \$525.00 per month payable in advance on the 1st day of each month. The Landlord said he reduced the rent to \$500.00 at some point during the tenancy. The Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The Landlord said the Tenant had rent arrears of \$150.00 for January 2010 and did not pay rent for February 2010 and as a result, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord did not provide a copy of that Notice as evidence at the hearing. The Landlord said the rental unit was not re-rented for the balance of February 2010.

Analysis

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45(1) of the Act, a Tenant of a month-to-month tenancy must give one clear months notice. Consequently, even though the Tenant moved out on February 15, 2010, I find that he was responsible for a loss of rental income for the balance of that month.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover unpaid rent of \$150.00 for January 2010 and unpaid rent and a loss of rental income for February 2010 of \$500.00. I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover the \$50.00 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 payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent/ loss of rent:	\$650.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$700.00
Less: Security deposit:	(\$250.00)
Accrued interest:	<u>(\$0.00)</u>
Balance Owing:	\$450.00

Conclusion

A monetary order in the amount of **\$450.00** 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 17, 2010.

Dispute Resolution Officer