

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, a loss of rental income, cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's agent said he served the Tenants with a copy of the application and notice of hearing by registered mail to the Tenants' new residence on January 23, 2010. The Landlords' agent said the Tenants gave their forwarding address to another occupant of the rental property and he observed that the Tenants did, in fact, reside there. The Landlord's agent also said that the documents were signed for by the brother of one of the Tenants who is an adult. Based on the evidence of the Landlord, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are there arrears of rent 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 cleaning expenses?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on September 1, 2009 and was to expire on February 28, 2010 however it ended on or about January 7, 2010 when the Tenants moved out pursuant to an Order of Possession granted on December 29, 2009. Rent was \$1,100.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$550.00 on September 1, 2009.

The Landlord's agent said the Tenants paid November 2009 rent by way of a \$500.00 payment and a post dated cheque for \$600.00 which was later returned for insufficient funds. The Landlord's agent claimed that there are still arrears of rent for November 2009 of \$600.00 and rent is also unpaid for December 2009 and January 2010. The Landlord's agent said that he started advertising the rental unit for rent once it had been cleaned (which he estimated was around mid-January 2010). The Landlord's agent said he was unable to re-rent the unit until March 1, 2010 for the same rate of rent.

The Landlord's agent also claimed that the Tenants left the rental unit cluttered with garbage and unclean at the end of the tenancy. Consequently, the Landlord hired a cleaner to clean up the interior of the rental unit at a cost of \$440.00 and a carpet cleaner at a cost of \$99.75. The Landlord's agent said he also had to pay the new Tenants to remove a large amount of dog excrement from the back yard.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that the Landlord is entitled to recover unpaid rent of \$600.00 for November 2009, \$1,100.00 for December 2009 and \$248.39 for the period, January 1-7, 2010 for a total of \$1,948.39.

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. 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. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

In the absence of any evidence from the Tenants to the contrary, I find that the Landlord took reasonable steps to re-rent the rental unit and as a result, I find that the Landlord is entitled to recover a loss of rental income for the period January 8 - 31, 2010 in the amount of \$851.61 and for February 2010 in the amount of \$1,100.00 for a total of \$1,951.61.

The Landlord also sought to recover bank expenses for a returned cheque, late rent payment fees pursuant to a term of the Parties' tenancy agreement and advertising expenses. I find that the Landlord is entitled to a late payment fee of \$15.00 for each of November and December 2009, however in the absence of any evidence to corroborate a \$25.00 NSF bank fee or advertising expenses, those parts of the Landlord's claim are dismissed.

Section 37 of the Act says that a Tenant must leave a rental unit reasonably clean and undamaged at the end of a tenancy. Based on the evidence of the Landlord, I find that the rental unit was not left reasonably clean at the end of the tenancy and as a result, I find that the Landlord is entitled to recover \$440.00 for general cleaning and \$99.75 for carpet cleaning. However, the Landlord did not provide any evidence to corroborate his claim for yard clean up expenses and as a result, that part of his application is dismissed.

The Landlord also sought to recover expenses for photographs he took at the end of the tenancy. However, only faxed copies of those photographs were provided as evidence at the hearing and they were of little assistance (because nothing could be made out).

Consequently, I find that the Landlord is not entitled to recover expenses for photographs and that part of his claim is also dismissed.

I find that the Landlord is entitled to recover a portion of the filing fee for this proceeding. The Landlord admitted that he claimed \$1,300.00 for rent in error on his application, the result of which was to push the Landlord's claim over \$5,000.00 and require a \$100.00 filing fee instead of a \$50.00 filing fee (for claims of \$5,000.00 and under). Consequently, had the Landlord claimed the correct amount of rent his claim would have been under \$5,000.00 and he would only have had to pay a \$50.00 filing fee and as a result, I find that he is only entitled to recover that amount.

In a previous hearing, the Landlord was permitted to deduct a \$50.00 filing fee from the Tenants' security deposit. Consequently, I order the Landlord pursuant to s. 38(4) of the Act to keep the balance of the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$1,948.39
Loss of rent:	\$1,951.61
Late fees:	\$30.00
General cleaning:	\$440.00
Carpet cleaning:	\$99.75
Filing fees:	<u>\$50.00</u>
Subtotal:	\$4,519.75
Less: Security Deposit	
Balance:	(\$500.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$4,019.75

Conclusion

A monetary order in the amount of **\$4,019.75** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: April 12, 2010.

Dispute Resolution Officer