

Decision

Dispute Codes:

OPR; MNR; MND; MNSD; FF; O

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damages to the rental unit, to retain the security deposit in partial satisfaction of her monetary claim; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Matter

At the outset of the Hearing, the Landlord testified that the Tenant had vacated the rental unit on March 17, 2010. Therefore, the Landlord withdrew her application for an Order of Possession.

The Landlord's application for an Order of Possession is dismissed as withdrawn.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony and evidence:

The Landlord mailed the Notice of Hearing documents to the Tenant, by registered mail, to the rental unit on March 8, 2010. The Landlord provided the tracking number for the documents. The Landlord testified that the registered mail package was returned to her, unclaimed.

The Tenancy began on July 15, 2009 for a fixed term of one year. Monthly rent was \$900.00. A security deposit in the amount of \$450.00 was required. A copy of the tenancy agreement was entered in evidence.

At the beginning of the tenancy, the Tenant provided the Landlord with a cheque for the security deposit, which was returned due to insufficient funds. The Tenant provided the Landlord with the security deposit on August 29, 2009.

The Tenant did not pay January's rent when it was due, so the Landlord issued a Notice to End Tenancy for Unpaid Rent on January 18, 2010. The Tenant paid the Landlord rent for January on January 28, 2010. The Landlord accepted the money for use and occupancy only. The Tenant asked to remain in the rental unit until the end of February, 2010. The Landlord and Tenant agreed on conditions of his use and occupancy. A copy of the written agreement was entered in evidence.]At the end of February, 2010, the Tenant asked if he could remain until the end of March, 2010. The Landlord testified that she agreed, if the full rent amount of \$900.00 was paid, for use and occupancy only, on March 1, 2010, and the Tenant vacated the rental unit on March 29, 2010.

The Landlord testified that the Tenant paid only \$200.00 for use and occupancy for the month of March, 2010. The Landlord is applying for the remaining \$700.00 for use and occupancy, as agreed by the Tenant. The landlord is also applying for liquidated damages in the amount of \$450.00, for early termination of the lease, and to apply the security deposit towards partial satisfaction of her monetary award.

The Landlord testified that the Tenant caused damage to a closet door, and removed a chandelier from the dining room. The Landlord provided estimates for the cost of replacing the chandelier, and cost repairing electrical damage, in the total amount of \$199.00.. The Landlord also provided estimates for the cost of repairing the closet door, in the amount of \$30.00.

The Landlord stated that the Tenant did not clean the rental unit, and therefore she is applying for compensation for cleaning it in the amount of \$120.00 (2 hours @\$60.00

per hour). The Landlord testified that the Tenant left some personal items on the floors and on the balcony, and left the fridge full of food.

The Landlord testified that the Tenant had agreed to meet her at the rental unit on March 16, 2010, at 5:00 p.m. to perform a move-out inspection. The Landlord stated that the Tenant was not ready to do the inspection at 5:00 p.m., and that she waited until 7:00 p.m. but he was still not ready. The Landlord testified that the Tenant agreed to meet her at noon on March 17, 2010 for the move-out inspection, but he did not show up. The Landlord testified that the Tenant returned the keys to the rental unit on March 16, 2010.

The Landlord stated that the rental unit was re-rented on April 15, 2010.

Analysis

I accept the Landlord's testimony that the Notice of Hearing documents were mailed, by registered mail, to the Tenant on March 8, 2010. Service in this manner is deemed to be effected 5 days after mailing the document to the Tenant's address, regardless of whether or not the Tenant chooses to accept delivery of the registered mail. Therefore, I find that the Tenant was duly served with the Notice of Hearing documents on March 13, 2010. Despite being served, the Tenant did not sign into the teleconference, and this matter proceeded in his absence.

I accept that the undisputed testimony of the Landlord with respect to the Agreement between the parties for use and occupancy of the rental unit for March, 2010. I award the Landlord her monetary claim for loss of rent for March, 2010, in the amount of \$700.00.

The Landlord seeks liquidated damages in the amount of \$450.00. Liquidated damages can be awarded if the tenancy agreement allows for liquidated damages in a specified amount. The tenancy agreement does not contain a clause with respect to liquidated damages. Therefore, this portion of the Landlord's claim is dismissed.

If a tenant is provided with two opportunities and a Notice of Final Inspection Opportunity, a landlord may prepare a move-out Condition Inspection Report by herself. There was insufficient evidence with respect to the remainder of the Landlord's claim for damages (i.e. a copy of a Condition Inspection Report). Therefore, the Landlord's claim for damages is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Loss of rent for the month of March, 2010	\$700.00
Recovery of the filing fee	\$50.00
Subtotal	\$750.00
Less security deposit	- \$450.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$300.00

Conclusion

The Landlord's application for an Order of Possession is dismissed as withdrawn.

I hereby grant the Landlord a Monetary Order in the amount of \$300.00 against the Tenant. 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: May 5, 2010