

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 11, 2010 to a forwarding address provided by him. The Landlord said the Tenant did not pick up the hearing package and it was returned to her. Section 90 of the Act says that a document served by mailing it is deemed to be received by the recipient 5 days later whether the recipient chooses to pick up the mail or not. Based on the evidence of the Landlord, I find that the Tenant was served with the hearing package as required by s. 89 of the Act and the hearing proceeded in his absence.

The Landlord admitted that there was another co-tenant named on the tenancy agreement but she claimed that that person moved out of the rental unit some time prior to the end of the tenancy without giving notice or providing a forwarding address to the Landlord or the Tenant named in these proceedings.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income 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 November 1, 2009 and ended on February 1, 2010 when the Tenant moved out. Rent was \$974.00 per month payable in advance on the last day of each month. The Tenant paid a security deposit of \$487.00 at the beginning of the tenancy.

The Landlord said that the Tenant advised her on February 1, 2010 that he could not pay the rent for February and that he was moving out that day. The Landlord said she took steps to re-rent the unit by advertising it and doing showings but it could not be re-rented until April 1, 2010. Consequently, the Landlord sought a loss of rental income for the month of February 2010.

Analysis

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give a Landlord one clear month's notice in writing that they are ending their tenancy. Consequently, the earliest the Tenant's notice given on February 1, 2010 could have taken effect would have been March 31, 2010.

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 contradictory evidence from the Tenant, I find that the Landlord took reasonable steps to re-rent the rental unit for all or part of February 2010 but without success. Consequently, I find that the Landlord is entitled to recover loss of rental income from the Tenant for February 2010.

As the Landlord has been successful in this matter, I find that she is also entitled to recover from the Tenant 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 compensation award. The Landlord will receive a monetary order for the balance owing of \$537.00.

Conclusion

A monetary order in the amount of **\$537.00** 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: May 18, 2010.

Dispute Resolution Officer