

DECISION

Dispute Codes: MNR; FF

Introduction

This is the Landlord's application for a Monetary Order loss of rent; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony at the Hearing.

Preliminary Matter

With the consent of all parties, at the outset of the Hearing, the Landlord's Application was amended to add the other Tenant MJ as a Respondent.

Issues to be Decided:

- Is the Landlord entitled to a Monetary Order under the provisions of Section 67 of the Act?

Background and Evidence

The tenancy agreement was a two year term lease, commencing May 1, 2009, and ending April 30, 2011. Monthly rent was \$2,350.00. The Tenants paid a security deposit in the amount of \$1,175.00 on May 1, 2009.

The Landlord gave the following testimony:

The Landlord testified that he was out of the country from the beginning of December, 2009 until December 25, 2009. He stated that the Tenants' rent cheque for December bounced and on December 7, 2009, the Landlord's agent issued a 10 day Notice to End Tenancy for unpaid rent in the amount of \$2,475.00 which was due on December 1, 2010. The Landlord testified that the amount included \$125.00 in unpaid utilities. The Landlord testified that he had an oral agreement with the Tenants that they would pay \$125.00 per month for utilities and they had not paid utilities for the month of December.

The Tenants ended the tenancy before the end of the term of the lease. The Landlord testified that he did not know exactly when the Tenants moved out of the rental unit, but that they were gone when he returned on December 25, 2011.

The Landlord testified that he entered into an agreement with the Tenant MJ on December 30, 2010, that the Tenant MJ would pay half of December's outstanding rent and half of January's outstanding rent plus ½ of the utilities for those two months. In exchange, the Landlord agreed not to pursue the Tenant MJ for any other losses as a result of breaking the lease, and would return half of the security deposit to the Tenant MJ.

The Landlord testified that the Tenant MJ put an ad in a popular internet site to attempt to re-rent the rental unit. The Tenant MJ found a suitable tenant to rent the rental unit effective February 1, 2010, for \$2,250.00 per month. The Landlord testified that he did not attempt to find another tenant at the same rent the Tenants were paying.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for December, 2009 plus utilities	\$2,475.00
Loss of rent for January, 2010 plus utilities	\$2,475.00
Loss of rent to end of term of lease (14 months x \$100.00)	\$1,400.00
Less amount paid by Tenant MJ	<u>-\$2,475.00</u>
Balance owing	\$3,875.00

The Landlord asked that the security deposit be applied against partial satisfaction of his monetary award.

The Tenant HZ gave the following testimony:

The Tenants moved out of the rental unit in the middle of December, 2009.

The Tenant HZ stated that the agreement regarding utilities was that the Tenants would pay \$125.00 per month, which was an estimated amount, and at the end of a year there would be an accounting of the actual utilities used by the Tenants. The Tenant HZ stated that this accounting was never done.

The Tenant HZ said that the Landlord did not tell the Tenants that he would be seeking to recover the difference between what he would have received in rent for the remainder of the term of the tenancy, and what the new tenant pays.

The Tenant HZ stated that she does believe she is responsible for paying rent for December and January, or for paying hydro for the months of December and January, or for the Landlord's loss of rent (\$100.00 x 14 months) for the remainder of the term.

The Tenant MJ gave the following testimony:

The Tenant MJ stated that his recollection with respect to hydro was the same as the Tenant MJ's. There was no written agreement in place, but he understood that the hydro payments would be \$125.00 per month and would be reconciled at the end of the year.

The Tenant MJ stated that he believed the Tenants were responsible for rent for the months of December and January.

Analysis

The Tenants breached the tenancy agreement by ending the tenancy early. In a case such as this, the Landlord has two options:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date the Tenants ended the tenancy; or
2. Accept the end of the tenancy, with notice to the Tenants of his intention to claim damages for loss of rent for the remainder of the term of the tenancy. The Landlord has a responsibility to make a reasonable effort to re-rent the rental unit as quickly as possible and for the same amount of money the Tenants were paying.

In this case, there was no evidence that the Landlord sought to re-rent the rental unit at the same price the Tenants were paying. The Tenant MJ found a suitable tenant for February 1, 2010, at \$100.00 a month less rent, and the Landlord simply accepted that tenant without attempting to find a tenant at the same monthly rent. Therefore, the Landlord's application for loss of rent in the amount of \$1,400.00 for the remainder of the tenancy is dismissed.

The Landlord is entitled to unpaid rent for the month of December, 2009, and loss of rent for the month of January, 2010. The Tenant MJ paid \$2,475.00 to the Landlord towards unpaid rent for December and January, leaving a balance of \$2,225.00 owing.

With respect to the unpaid hydro, the parties had an agreement that there would be an accounting of the actual hydro used, at the end of December, 2009. That reconciliation has not occurred, and therefore, the Landlord has not provided sufficient evidence of the actual amount owed by the Tenants for hydro. This portion of his claim is dismissed with leave to reapply.

The Landlord has been partially successful in his application and is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in the amount of \$1,175.00 in partial satisfaction of his monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$2,225.00
Recovery of the filing fee	\$50.00
Less set-off of security deposit	<u>-\$1,175.00</u>
TOTAL	\$1,100.00

A landlord can recover the full amount of rent, utilities or any damages from all or any of the tenants. Co-tenants are jointly and severally responsible for debts or damages relating to a tenancy. The responsibility falls to the Tenants to apportion between themselves any amount owing to the Landlord.

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$1,100.00 against the Tenants. This Order must be served on the Tenants 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: August 9, 2010.

Dispute Resolution Officer