



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

The Landlord said he served the Tenants with his Application and Notice of Hearing (the "Hearing Package") on June 4, 2010 by registered mail to the rental unit address but the mail was returned to him unclaimed. Section 90 of the Act says that a document served in this way is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants absence.

I find that the dispute address on the Landlord's application has an obvious error in that it erroneously refers to the city as "Kelowna" when all of the other documentation and information on the Landlord's application indicates that it should be "Lake Country." Consequently, the style of cause is amended to correct the dispute address.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on April 1, 2010 and ended on or about June 15, 2010 when the Tenants moved out. Rent was \$960.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$480.00 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for May 2010 when it was due and as a result, he served them on May 4, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said he subsequently entered into a Mutual Agreement to End Tenancy with one of the Tenants (R.K.) which was to take effect on May 31, 2010. The

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Landlord said the Tenants then told him that they would move out on June 15, 2010 and he scheduled a move out condition inspection with them for that day. However, on June 15, 2010, the Landlord said the Tenants did not attend the rental unit and left the rental unit full of garbage and in need of cleaning. Consequently, the Landlord said he was unable to re-rent the rental unit for the balance of June 2010 and suffered a loss of rental income. The Landlord also said that the Tenants did not pay rent for the period May 1 – June 15, 2010.

Analysis

As the tenancy has ended, the Landlord's application for an Order of Possession is dismissed without leave to reapply. In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears for the period May 1 – June 15, 2010 in the total amount of \$1,440.00.

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. Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. Based on the evidence of the Landlord, I find that the Tenants did leave the rental unit reasonably clean and that as a result, the rental unit could not be re-rented for the period June 16 – 30, 2010. Consequently, I find that the Landlord is entitled to compensation for a loss of rental income in the amount of \$480.00.

I further find that the Landlord is entitled to recover late payment fees of \$20.00 for May and June 2010 pursuant to a term of the Parties' tenancy agreement to that effect. As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the monetary award. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$1,440.00
Loss of rental income:	\$480.00
Late fees:	\$40.00
Filing fee:	\$50.00
Subtotal:	\$2,010.00
Less: Security deposit:	(\$480.00)
Balance Owing:	\$1,530.00



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Conclusion

A Monetary Order in the amount of **\$1,530.00** 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: July 19, 2010.

Dispute Resolution Officer