



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; a monetary Order for damage to the rental unit; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew his application for an Order of Possession, as the rental unit was vacated on, or about, July 31, 2010.

The Landlord stated that he mailed copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant with the initials "D.F." at the rental unit on July 22, 2010, via registered mail. The Landlord cited a tracking number to corroborate this statement. In the absence of evidence to the contrary, I accept that these documents were served to this Tenant in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however this Tenant did not appear at the hearing.

The Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant with the initials "S.F." at the rental unit on July 22, 2010. In the absence of evidence to the contrary, I accept that these documents were served to this Tenant in accordance with section 89(1)(a) of the *Act*, however this Tenant did not appear at the hearing.

The Landlord stated that he submitted three packages of evidence to the Residential Tenancy Branch on August 27, 2010 and that he served copies of all this evidence to the Tenant via email on August 27, 2010. Section 88 of the *Act* outlines a variety of ways in which evidence can be served on another party. Section 88 of the *Act* does not permit evidence to be served via email. I therefore decline to accept or consider any of the evidence that was submitted to the Residential Tenancy Branch on August 27, 2010, as it has not been served in accordance with section 88 of the *Act*. In making this decision I find that I cannot determine, with any degree of certainty, that the Tenants received the evidence that was served to them by email. I find that it would be prejudicial to the Tenants to consider this evidence, given that they may have attended the hearing if they knew the nature of the evidence being presented by the Landlord.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; a monetary Order for loss of revenue; a monetary Order for late fees; a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on July 11, 2009; that the Tenants paid a security deposit of \$685.00; that the Tenants were required to pay monthly rent of \$1,475.00 on the first day of each month; that the Tenants vacated the rental unit on, or about, July 31, 2010; and that the Tenants did not provide him with a forwarding address.

The Landlord stated that he personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 23, 2010, to the Tenant with the initials "S.F." on July 13, 2010. The Notice declared that the Tenant owed \$1,363.84 in rent that was due on July 01, 2010.

The Landlord stated that the Tenants failed to pay \$105.00 of the rent that was due on April 01, 2010; \$100.00 of the rent that was due on May 01, 2010; \$229.42 of the rent that was due on June 01, 2010; and \$729.42 of the rent that was due on July 21, 2010. The Landlord is seeking compensation for \$1,163.84 in unpaid rent.

The Landlord is also seeking compensation for loss of revenue for the month of September, as the Tenants did not vacate the rental unit on the effective date of the Notice to End Tenancy and the unit needed extensive cleaning before it could be re-rented.

The Landlord stated that the tenancy agreement stipulates that the Tenants must pay a \$50.00 fee whenever they are late paying their rent. The Landlord is seeking compensation, in the amount of \$200.00, as the Tenants did not pay their rent in full in April, May, June or July of 2010.

The Landlord stated that someone permitted on the property by the Tenants left three large piles of roofing materials in the yard of the rental unit and that there was a large amount of furniture, building debris, and assorted garbage left in the rental unit and on the residential property. He stated that he received a letter from the City of Victoria, dated July 27, 2010, in which he was advised that there is a large amount of debris in the yard of the rental unit and that there are open food products in the house. He stated that he received a letter from the Vancouver Island Health Authority, dated July 27, 2010, in which he was advised that the property that has accumulated on the residential property and inside the rental unit constitutes a health hazard.

The Landlord is claiming compensation, in the amount of \$672.00, to remove roofing materials from the residential property and compensation, in the amount of \$1,008.00, to remove other debris from the rental unit and the residential property. At the hearing the Landlord stated that his claims for cleaning the property were merely estimates and that in August of 2010 he paid a company \$2,013.76 and an individual \$668.53 to remove the debris from the property.

I did not have copies of receipts for the \$2,103.76 or the \$668.53 payment before me at the time of the hearing, although the Landlord alleges that they were submitted to the Residential Tenancy Branch on August 27, 2010. As I have declined to accept all of the evidence submitted to the Residential Tenancy Branch on August 27, 2010, due to service issues, I find that I could not have considered this evidence even if it was before me at the time of the hearing.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,475.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants did not pay \$105.00 of the rent that was due on April 01, 2010; \$100.00 of the rent that was due on May 01, 2010; \$229.42 of the rent that was due on June 01, 2010; and \$729.42 of the rent that was due on July 21, 2010. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,163.84 in outstanding rent to the Landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were served with a Notice to End Tenancy that directed the Tenants to vacate the rental unit by July 23, 2010, pursuant to section 46 of the *Act*. Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended on July 23, 2010. On this basis I find that the Tenants were obligated to vacate the rental unit by July 23, 2010.

I find that the Tenants did not comply with the *Act* when they did not vacate the rental unit by July 23, 2010. I find that the Tenants' actions prevented the Landlord from finding new tenants for August 01, 2010, as the Landlord did not have reasonable grounds to believe that the rental unit would be vacated by that date. I find that the

Landlord is therefore entitled to compensation for loss of revenue from August of 2010, in the amount of \$1,475.00.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

In these circumstances the Landlord testified that the tenancy agreement provides for a \$50.00 late fee, which is not authorized by the *Residential Tenancy Regulation*. I find that the term of the tenancy agreement regarding late fees does not comply with the legislation, and therefore I dismiss the Landlord's application to collect \$200.00 for late fees from April, May, June, and July of 2010. To be enforceable, the tenancy agreement must stipulate that the Tenant is subject to late payment fees of \$25.00 or less.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants left a large amount of garbage in the rental unit and on the rental property at the end of the tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to remove this property at the end of the tenancy.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of removing debris from the property. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlord's statement that he paid \$2,772.29 to remove the debris. On this basis, I award nominal damages to the Landlord, in the amount of \$1.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,689.84, which is comprised of \$1,163.84 in unpaid rent; \$1,475.00 in loss of revenue from August of 2010; \$1.00 in nominal damages; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the Tenants' security deposit of \$685.00, in partial satisfaction of the monetary claim, pursuant to section 72(2) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,004.84. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court 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: September 10, 2010.

Dispute Resolution Officer