



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the female Tenant at the rental unit by a friend of the Landlord's, in the presence of the Landlord, on June 09, 2010 at 5:40 p.m. In the absence of evidence to the contrary, I accept that these documents were personally served to the female Tenant in accordance with section 89(1) of the *Act*, however the female Tenant did not appear at the hearing.

The Landlord stated that extra copies of the Application for Dispute Resolution and Notice of Hearing were given to the female Tenant on June 09, 2010 at 5:40 p.m. with the expectation that she would serve the extra copy of the documents to the male Tenant. I find that these documents have not been served to the male Tenant in accordance with section 89(1) of the *Act*.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the *Act*. In this case only the female Tenant has been served with the Application for Dispute Resolution and Notice of Hearing in accordance with section 89(1) of the *Act*. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the female Tenant who has been properly served with notice of this proceeding. As the male Tenant has not been served the Application for Dispute Resolution as required by section 89(1) of the *Act*, the monetary claim against him is dismissed without leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent; to compensation for loss of revenue; to compensation for damage to the yard; and to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord stated that this tenancy began on November 01, 2008; that the Tenants paid a security deposit of \$390.00 on October 11, 2008; and that the Tenants had agreed to pay monthly rent of \$780.00 on the first day of each month.

The Landlord stated that on June 01, 2010 the Tenants provided him with written notice of their intent to vacate the rental unit on June 15, 2010. A copy of that notice was submitted in evidence, in which the female Tenant authorized the Landlord to apply the security deposit to rent for June of 2010.

The Landlord stated that the Tenants vacated the rental unit on June 15, 2010; that they paid no rent for June of 2010; and that they did not provide the Landlord with a forwarding address at the end of the tenancy. The Landlord is seeking compensation for rent from June, in the amount of \$780.00.

The Landlord is also seeking compensation for loss of revenue for July of 2010. He contends that the late notice provided by the Tenants prevented him from finding new tenants for July. He stated that he advertised the rental unit in the local newspaper on July 01, 2010 and arranged to have an advertisement posted on the bulletin board at a local mine. He stated that he was able to re-rent the rental unit on July 29, 2010, for which he was paid \$150.00.

The Landlord is seeking compensation, in the amount of \$80.00, for damage to the yard of the rental unit. He stated that the Tenants had discarded wood pellets in the yard; they had bonfires on the lawn and garden; they left garden poles and burned wood on the property; and they had a pool on the lawn which damaged a 14' diameter area. Landlord stated that he spent approximately six hours cleaning and repairing the yard.

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 that required them to pay monthly rent of \$780.00 on the first day of each month.

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the

day before the date that rent is due. To end this tenancy in compliance with section 45 of the *Act*, the written notice provided by the Tenant on June 01, 2010 served to end the tenancy on July 31, 2009.

Section 26 of the *Act* requires Tenants to pay rent when rent is due. As this tenancy was still in effect on June 01, 2010 I find that the Tenant was obligated to pay the monthly rent of \$780.00 for June.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or a tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize his loss of revenue from July of 2010.

In determining that the Landlord did not take reasonable steps to minimize his loss, I was heavily influenced by the Landlord's testimony that he did not advertise the rental unit until July 01, 2010. As the rental unit was vacated on June 15, 2010, I find that the Landlord had the opportunity to advertise the rental unit on June 15, 2010. I find that the delay in advertising likely had an impact on the loss of revenue experienced by the Landlord, as it would be extremely difficult to find a new tenant for July 01, 2010 when the rental unit was not advertised until that date. As I have determined that the Landlord did not properly mitigate his losses, I dismiss the Landlord's application for loss of revenue.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants failed to comply with section 37(2) of the *Act* when they damaged the yard in the manner described by the Landlord and failed to repair that damage. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*. In these circumstances the Landlord spent approximately six hours cleaning the debris from the yard and repairing the damage to the yard, and I find that the \$80.00 he is claiming is reasonable compensation for his time.

I find that the Landlord's application has merit, and I find 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 \$910.00, which is comprised of \$780.00 in unpaid rent from June of 2010, \$80.00 for repairing the lawn, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I hereby authorize the Landlord to retain the security deposit of \$390.00 plus interest of \$0.98 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$519.02. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: October 22, 2010.

Dispute Resolution Officer