



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for damages to the rental unit, for unpaid rent, to retain the security deposit, compensation for damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution. The application also included a request for substitute service and more time to serve the respondent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The tenancy ended in August 2008; the landlord submitted the application on July 6, 2010; within the 2 year limitation.

The landlord utilized a process server to serve the tenant with notice of this hearing. Service occurred on July 12, 2010. The tenant acknowledged receipt of the Notice and I find, pursuant to section 71(2)(b) that the tenant has been personally served with notice of this hearing.

The notice of hearing was issued on July 6, 2010, and the landlord took appropriate steps to ensure service was completed as quickly as possible. I have applied section 66 of the Act, which allows service, in exceptional circumstances, beyond the required 3 day time frame. The application indicated that the landlord would request substitute service; however, personal service was able to be completed within 6 days of the notice of hearing issue date, a delay that did not prejudice the tenant.

In relation to the balance of the claims made by the landlord; the application clearly indicated that the landlord was claiming unpaid rent. The landlord served the tenant

with evidence indicating that a claim for damage to the rental unit was being made; however, the detailed calculation of the damages claim provided to the Residential Tenancy Branch on November 8, 2010, was not served to the tenant. The details of the dispute section of the application contained no calculation of the damages claimed and the application served to the tenant did not include a detailed calculation of the claim.

In the absence of service of a detailed calculation of the claim for damages to the tenant, I determined that the application before me would proceed based on the details contained in the application. Any claim for damages was not before me and the landlord is at liberty to take any further action under the Act he sees fit. I pointed the parties to the details of dispute section of the application which includes a requirement for a detailed calculation related to any monetary claim.

None of the witnesses provided testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to loss of rent revenue for September 2008?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in 2005; at the end of the tenancy rent was \$1,150.00 due on the first day of each month. A mutual agreement ending the tenancy in May, 2010, was signed; the tenancy then continued with the tenants paying rent for June, July in full and \$380.00 of August rent due. September rent was not paid.

The landlord applied to retain the security and pet deposits paid in 2005. The tenant confirmed during the hearing that he never supplied the landlord with a written forwarding address.

In July 2008 the landlord issued a 10 day notice ending tenancy for unpaid rent; the rent was paid and the tenancy was reinstated.

The landlord supplied a copy of a hand-written notice given by the tenant, dated "August 2008." The notice indicated the tenants would move out of the rental unit. The tenants moved out by August 15, 2010. The tenants submitted that they moved out as they had been given only monthly extensions to remain in the rental unit and they believed they must move out. No further tenancy agreement was signed after the initial document in 2005, which was a 3 month fixed-term that converted to a month-to-month agreement.

The tenant testified that the written notice ending tenancy was given to the landlord some time after August 1, 2010.

The tenant gave the landlord an August 11, 2010, hand-written note indicating that unpaid rent should be applied against the security and pet deposits paid to the landlord in 2005. The landlord stated that written permission was not granted to apply the deposits to rent owed.

The landlord stated he suffered a loss of September, 2010, rent revenue as the tenants failed to provide notice as provided by the Act. The landlord was unable to rent the unit out for several months as a number of repairs were required.

Analysis

I find that the mutual agreement ending tenancy signed in May, 2010, was effectively cancelled and the tenancy was reinstated once the tenants paid rent for June, 2010.

I find that this tenancy was a month-to-month agreement which ended as a result of written notice given by the tenants some time after July 31, 2010.

I find that the tenancy ended when the tenants vacated the rental unit; by August 15, 2010.

The tenant confirmed that he has never given the landlord his forwarding address in writing; therefore, the portion of the landlord's application related to retention of the deposits paid in 2005 was not required, as section 39 of the Act applied effective on the 1 year anniversary of the end of the tenancy. Section 39 provides:

39 *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The landlord confirmed that he had not given written permission to have the deposits applied against rent owed.

Section 45 of the Act requires a tenant to provide a landlord with written notice at least 1 day prior to the day in the month rent is due. In this case the written notice given in August would have been effective September 30, 2010, as rent was due on the 1st day of each month. There is no evidence before me that the parties signed another mutual agreement ending the tenancy or that there was any agreement that notice should not be provided as required by the Act.

The tenants paid \$380.00 rent owed for August. I find that the landlord is entitled to compensation for the balance of August, 2010, rent owed in the sum of \$770.00.

I find that the failure of the tenants to pay rent for September, 2010, entitles the landlord to compensation for unpaid September rent in the sum of \$1,150.00, as the notice ending tenancy given in August was effective September 30, 2010.

I find that the landlord's application has merit and that the landlord entitled to recover a proportion of the filing fee; \$50.00, from the tenant for the cost of this Application for Dispute Resolution. I have adjusted the filing fee as the amount claimed before me did not require a \$100.00 fee.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$1,970.00, which is comprised of unpaid August and September, 2010, rent in the sum of \$1,920.00 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for \$1,970.00. 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.

The matter of the deposits was settled by August 15, 2009, pursuant to section 39 of the Act.

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: November 22, 2010.

Dispute Resolution Officer