



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities. The landlord and the tenant both attended the hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The tenant also called a witness who gave affirmed testimony and assisted the tenant as an advocate.

All information and testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

This month-to-month tenancy began on May 1, 2010 and ended on June 25, 2010. A copy of the tenancy agreement was provided by the landlord in advance of the hearing.

The landlord testified that rent in the amount of \$910.00 per month was payable in advance on the 1st day of each month and the landlord did not collect a security deposit from the tenant. He further testified that he only received \$100.00 rent from the tenant during the tenancy. He also stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 15, 2010 with an expected date of vacancy of June 25, 2010.

The landlord further testified that he advertised the rental unit for rent, and could have rented it sooner than he did, but he's fussy about whom he rents to. The landlord is claiming \$1,720.00 in rental arrears and has requested a claim for loss of revenue for the month of July, 2010.

The tenant testified that the parties had agreed that the first month of rent would be \$400.00 and then would be increased to \$910.00 in order to give the tenant time to find a roommate. She further stated that it was agreed the arrears would be paid by the end of June. On June 15, 2010 she gave the landlord \$100.00 and was served with the notice to end the tenancy the same day.

The tenant further testified that she had a conversation with the landlord on June 2, 2010 wherein she advised the landlord that her roommate did not move in and the landlord replied that they could work it out. She asked for the rent to be reduced to \$600.00, but the landlord replied that he could reduce the rent if his wife could move in with the tenant, but the tenant did not agree. She stated that the landlord even tried to get the tenant's boyfriend to pay the arrears, who also resided in a suite within the building with his mother.

The tenant's advocate stated that the tenancy agreement was not the most recent published by the Residential Tenancy Branch, and that the landlord is not permitted under the *Act* to enter into an agreement with the tenant that is unconscionable. He stated that the tenancy agreement does not contain the initials of the landlord where items have been crossed out or amended, only the initials of the tenant. He further stated that under Section 7, if the landlord does not comply with the *Act*, regulations or the tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

The tenant further testified that the landlord required her to move from the rental unit on the 25th day of the month, and therefore, a pro-rated amount of rent ought to be credited to the tenant.

Analysis

I have reviewed the tenancy agreement and I find no terms that are unconscionable. A term is unconscionable if the term is oppressive or grossly unfair to one party, and I have no evidence before me that any portion of the tenancy agreement is grossly unfair to either party. *The Residential Tenancy Act* also states that

10 (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form use.

The *Act* also states that the standard terms are terms of every tenancy agreement whether or not it is in writing.

I find that the tenancy agreement was entered into voluntarily by the parties, and the rent is clearly \$910.00 per month. The tenant was not able to provide proof that a different tenancy agreement existed, or that the landlord agreed that the first month of rent would be \$400.00 and the landlord disputed that evidence.

With respect to the tenant's advocate's submissions that under Section 7 of the *Act*, the landlord must compensate the tenant for damage or loss that results from the landlord's failure to comply with the *Act*, regulation or tenancy agreement, there is no application before me by the tenant for such compensation.

I further find that the landlord is entitled to claim for the whole month of June's rent even though he served the tenant with a notice to end the tenancy that was effective on the 25th day of June.

In the circumstances, I find that the landlord is entitled to a monetary order for unpaid rent. The landlord is also entitled to recover the \$50.00 filing fee for the cost of this application. I also find that the landlord did not mitigate his loss by advertising and providing proof that the unit was re-rented as soon as practicable, and for failure to mitigate his loss, the landlord's application for loss of revenue is hereby dismissed.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$1,770.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: December 08, 2010.

Dispute Resolution Officer