



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, FF
OPR, OPB, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the filing fee for this proceeding. The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlords claimed that the Tenant had moved out of the rental unit and as a result, I find that their application for an Order of Possession is not necessary and it is dismissed without leave to reapply.

The Landlords' application names two parties as Tenants however only one of them (D.B.) is a party to the tenancy agreement. Consequently, I find that the other named party (S.B.) is not properly named as a Tenant in these proceedings and the style of cause is amended to remove her as a Party. The Landlord (D.W.) said he served a copy of his Application and Notice of Hearing (the "hearing package") on the Tenant in person on November 17, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence. The Landlord also claimed that he had not received a copy of the Tenant's application for Dispute Resolution. In the circumstances, the Tenant's application is dismissed (and as the tenancy has ended) without leave to reapply.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 6, 2005. Rent is \$980.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$475.00 at the beginning of the tenancy.

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The Landlord (D.W.) said the Tenant did not pay rent for November 2010 when it was due and as a result, on November 6, 2010, the Landlords served the Tenant's spouse (an adult who resided in the rental unit) in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2010. The Landlord said the Tenant has not paid the outstanding rent for November 2010 and did not pay any rent for December 2010.

The Landlord said the Tenant's spouse advised him verbally (after receiving the 10 Day Notice) that they would be moving out of the rental unit and said they would contact him to confirm the move out date and to arrange a move out inspection. The Landlord said he contacted the Tenant on or about December 4, 2010 when he noticed that there appeared to be no one in the rental unit. The Landlord said the Tenant confirmed at that time that he had moved out and claimed that he left the keys in the mail box but the Landlord said he could not find them. The Landlord said the Tenant did not give him a forwarding address.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears of \$980.00 for November 2010. I also find that the Tenant is responsible for unpaid rent for December 1 – 4, 2010 in the pro-rated amount of \$126.46.

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. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear month's written notice to end the tenancy. As the Tenant received the 10 Day Notice to End Tenancy on November 6, 2010, I find that the earliest the Tenant could have ended the tenancy (if he had given one clear month's notice on that date) would have been December 31, 2010. As a result, I find that the Tenant must also compensate the Landlords for a loss of rental income for the period December 5 – 31, 2010 in the pro-rated amount of \$853.54.

As the Landlords have been successful in this matter, I find that they are entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and accrued interest in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing as follows:



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Unpaid rent (November 2010):	\$980.00
Unpaid rent (Dec. 1 – 4, 2010):	\$126.46
Loss rental income (Dec. 5 – 31, 2010):	\$853.54
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$2,010.00
Less: Security deposit:	(\$475.00)
Accrued interest:	<u>(\$16.82)</u>
Balance Owing:	\$1,518.18

Conclusion

The Tenant's application is dismissed without leave to reapply. The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$1,518.18** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: December 07, 2010.

Dispute Resolution Officer