



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to unpaid rent and for costs to dispose of personal items abandoned by the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

The landlord did provide some documentary evidence in support of this application; however, a copy was not provided to the tenant and it was not submitted in accordance with the rules of procedure. Therefore, I have not considered this evidence in making my findings.

Issue(s) to be Decided

Has the landlord established a monetary claim related to unpaid rent and costs to dispose of the tenant's personal property?

Background and Evidence

The landlord and tenant confirmed the following terms comprised their written tenancy agreement:

The tenancy commenced December 1, 2009 for the monthly rent of \$1,750.00 per month and a \$875.00 security deposit which was paid on November 20, 2009. The tenancy ended effective November 12, 2010 after the landlord served the tenant with a 10 day Notice to End Tenancy Due to Unpaid Rent.

There were two tenants named in the tenancy agreement and the tenants also had a roommate. However, the landlord was only able to serve one tenant with notice of this application and hearing. The tenant confirmed that the landlord was not provided with a forwarding address in writing.

The landlord testified that the tenant failed to pay the following rent owed:

- July 2010 in the amount of \$250.00;
- September 2010 in the amount of \$580.00;
- October 2010 in the amount of \$1,750.00; and
- November 2010 in the amount of \$1,750.00.

The landlord also seeks approximately \$600.00 related to expenses to have the tenant's personal possessions removed from the rental property. The landlord did not provide any verification to support this portion of his claim.

The tenant acknowledged the outstanding rent but disputed the expenses related to removing their possessions. The tenant stated that the landlord did not provide a sufficient opportunity for her to complete this. The tenant also objected to the landlord seeking outstanding rent from November 2010 when she responded to the notice to end tenancy and had vacated the rental unit by November 12, 2010.

The landlord responded that he had the tenant's possessions removed as quickly as possible to facilitate re-renting of the unit and also stated that even after a couple of weeks the tenant had still not removed abandon items when she collected an abandoned car.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the uncontested oral testimony of the landlord, I accept that the tenant failed to pay the rent owed for July, September, October and November 2010 in the amount of

\$4,330.00. I reject the tenant's argument that she should not be held responsible for the loss of rent in November on the basis that she complied with the notice to end tenancy. The tenant's liability to the landlord's loss of rent occurred on the 1st of the month when the rent was due and I am satisfied that the landlord could not have reasonably found new occupants by the effective date of the notice, or by November 12, 2010.

I deny the remainder of the landlord's claim due to lack of evidence. Although I am satisfied that the tenant breached the tenancy agreement and *Act* by failing to remove her possessions, the landlord has failed to provide any verification for the amount being claimed. I dismiss this portion of the landlord's claim without leave to re-apply.

Finally, as the landlord's claim was only partially successful, I find that the landlord is only entitled to partial reimbursement of the filing fee paid for this application and I award the landlord \$25.00 towards the \$50.00 filing fee paid.

I have determined that the landlord established a total monetary claim in the amount of **\$4,355.00.** From this sum I Order that the landlord may retain the tenant's security deposit of \$875.00 in partial satisfaction of this claim and I grant the landlord a monetary Order in the amount of **\$3,480.00.**

Although only one tenant is named in this decision, both tenants are responsible for the debt owing to the landlord and it is up to the tenants to apportion among themselves how the landlord is paid the amount owing.

Conclusion

I find that the landlord has established a monetary claim due to unpaid by the tenant for in the amount of **\$3,480.00.** I have issued the landlord a monetary Order for this sum. This Order may be 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: January 24, 2011.

Residential Tenancy Branch