



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. At the beginning of the hearing, the Landlord's agent said the tenancy has ended and as a result, the Landlord's application for an Order of Possession is dismissed without leave to reapply.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") on May 16, 2011 by registered mail. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. 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.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on October 1, 2009 and ended on or about June 2, 2011 when the Tenant moved out. Rent was \$1,290.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$625.00 and a pet damage deposit of \$625.00 at the beginning of the tenancy. The Landlord's agent said the Tenant had rent arrears of \$680.00 for May 2011 and as a result, on May 3, 2011 the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2011 by posting it to the rental unit door. The Landlord's agent said the Tenant did not pay the rent arrears for May 2011 and did not pay rent for June 2011.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover rent arrears for May 2011 in the amount of \$680.00.

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. The Landlord did not provide any evidence as to whether this was a month-to-month or fixed term tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice they are ending the tenancy. Consequently, I find that the very earliest the Tenant could have ended the tenancy would have been June 30, 2011. As a result, the Landlords are potentially entitled to recover loss of rental income for June, 2011. However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover a loss of rental income for the period June 1 – 15, 2011 in the prorated amount of \$645.00. The Landlord may re-apply for a further loss of rental income for June 2011 if necessary. As the Landlord has been successful in this matter, I find that she is also entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$625.00 and pet damage deposit of \$625.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$125.00.

Conclusion

A Monetary Order in the amount of **\$125.00** has been issued to the Landlord 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: June 07, 2011.

Residential Tenancy Branch