



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNDC; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue, and to recover the cost of the filing fee from the Tenants.

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.

It was established that the Landlord served the Tenant with the Notice of Hearing documents by registered Mail sent on May 12, 2011, to the rental unit.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I reviewed the evidence provided by the Landlord prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Matters

At the outset of the Hearing, it was determined that the Tenants vacated the rental unit on May 31, 2011. Therefore the Landlord's application for an Order of Possession is dismissed as withdrawn.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy began on April 1, 2010. The male Tenant's daughter is the Landlords' granddaughter. Monthly rent was \$600.00. The Tenants did not pay a security deposit. The Landlord issued a 10 Day Notice to End Tenancy for unpaid rent in the amount of \$1,200.00 on March 15, 2011. The Landlord served the Tenants with the Notice to End Tenancy on March 15, 2011.

The male Tenant testified that rent was in arrears for the months of February and March, 2011 in the amount of \$1,200.00, but he gave the Landlord \$1,200.00 cash on March 20, 2011 which was within the 5 days he was allowed to pay the arrears. He stated that the Landlord insisted that \$800.00 of that sum was going towards repayment of a loan the Tenant had borrowed from the Landlord's son. The Tenant testified that initially he agreed, but on reflection he told the Landlord that he wanted it to go towards rent. The Tenant stated that the Landlord assured him that he would work with the Tenant by accepting payments towards the \$800.00 unpaid rent. Based on the Landlord's assurances, the Tenants believed the Landlord was going to continue the tenancy.

The male Tenant stated that he got a voice mail from the female Landlord on April 28 or 29, indicating that the tenancy was not working out and that the Tenants should move. The Tenant stated that he sent an e-mail on April 30, 2011, to the Landlords advising that they would be moving out of the rental unit as soon as possible.

The Landlord testified that April rent was not paid on time, and that the Tenant advised the Landlord that it would be paid on April 21, 2011. The Landlord did not receive April's rent on April 21. The Landlord testified that he did not know when the Tenants would be moving out because they did not give a certain date in their e-mail. The Landlord is seeking a monetary award, calculated as follows:

Unpaid rent for February, 2011	\$200.00
Unpaid rent for March, 2011	\$600.00

Unpaid rent for April, 2011	\$600.00
Unpaid rent for May, 2011	\$600.00
Loss of revenue for June, 2011	<u>\$600.00</u>
	\$2,600.00

The Tenant agreed that he owed rent for April and May, but nothing else. The Tenant stated that on April 30, 2011, the Landlords knew he was moving out as soon as possible, maybe even within a couple of weeks.

Analysis

I have carefully considered the testimony of both parties, and find that the \$1,200.00 that the Tenant paid the Landlord on March 20, 2011 was for unpaid rent. I find that the male Landlord confused his personal relationship and his professional relationship with the Tenant. I find that the Tenant's initial agreement that only \$400.00 of the money was for rent was made under duress. After being provided time to think about the situation, the Tenant advised the Landlord within hours that all of the money was intended for unpaid rent. Therefore, I find that the Tenant does not owe any rent for the months of February and March, 201, and this portion of the Landlord's application is dismissed.

Section 45 of the Act defines the ways in which a tenant can end a month-to-month tenancy. A tenant must give at least one clear month's notice to the landlord and this notice must comply with Section 52 of the Act. Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the Tenant's e-mail of April 30, 2011, is not an effective notice because:

- It is not signed by the Tenant;
- It does not give the address of the rental unit; and
- It does not state the effective date of the notice.

Therefore I find that the Landlord is entitled to loss of revenue for the month of June, 2011.

The Landlord has been largely successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

The Landlord has established a monetary claim as follows:

Unpaid rent for April, 2011	\$600.00
Unpaid rent for May, 2011	\$600.00
Loss of revenue for June, 2011	\$600.00
Recovery of the filing fee	<u>\$50.00</u>
	\$1,850.00

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of **\$1,850.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 16, 2011.

Residential Tenancy Branch