



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. At the beginning of the hearing the Landlord claimed that the Tenants had vacated the rental unit and as a result, her application for an Order of Possession is dismissed without leave to reapply.

The Landlord said she served the Tenants in person on June 21, 2011 with a copy of the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on May 1, 2011 and ended on July 4, 2011 when the Tenants moved out. Rent was \$750.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord said the Tenants did not pay rent for June 2011 when it was due and as a result, on June 6, 2011, the Landlord served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenants did not pay rent for June or July 2011. The Landlord said she has been trying to re-rent the rental unit by advertising it and showing it to prospective tenants however it has not yet been re-rented.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears of \$750.00 for June 2011 and I award the Landlord that amount.

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 full, calendar month's notice they are ending the tenancy. Consequently, I find that the earliest the Tenants could have ended the tenancy had they given written notice on June 16, 2011 (the effective date of the 10 Day Notice) would have been July 31, 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.

I find that the Landlord is entitled to unpaid rent for the period July 1 – 4, 2011 in the pro-rated amount of \$96.77. I also find that the Landlord is entitled to a loss of rental income for the period July 5 – 15, 2011 in the pro-rated amount of \$266.13. If the Landlord is unable to re-rent the rental unit for the period July 16 – 31, 2011, she may re-apply for a loss of rental income for that period.

As the Landlord has been successful in this matter, I also find that she is entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,162.90** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: July 13, 2011.

Residential Tenancy Branch