



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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 in partial payment of those amounts. The Landlord said the tenancy has ended and as a result, she withdrew her application for an Order of Possession

The Landlord said she served the Tenant in person on July 25, 2011 with the Application and Notice of Hearing (the "hearing package"). 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 compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started as a one year fixed term tenancy on February 22, 2010 and continued on a month-to-month basis on its expiry. The Landlord said the tenancy ended on or about July 31, 2011 when the Tenant moved out. Rent was \$800.00 per month payable in advance on the 22nd day of each month. The Tenant paid a security deposit of \$400.00 on February 14, 2010.

The Landlord said the Tenant did not pay rent for the period, June 22 – July 21, 2011, when it was due and as a result on July 7, 2011 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 7, 2011 by posting it to the rental unit door. The Landlord said the Tenant did not make any rent payments after she was served with the 10 Day Notice. The Landlord also said the Tenant did not leave the rental unit reasonably clean and as a result, it could not be re-rented right away and she lost rental income for the period, July 22 – August 21, 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 the period, June 22 – July 21, 2011, in the amount of \$800.00 as well as pro-rated rent for the period, July 22 – 31, 2011 in the amount of \$258.06.

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, the earliest the Tenant could have ended the tenancy (had she given written Notice on July 7, 2011) would have been August 21, 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. The Landlord claimed that she started advertising the rental unit for availability approximately a week and a half after the tenancy ended but she provided no corroborating evidence of that. The Landlord also claimed that the rental unit needed extensive cleaning and painting before it could be re-rented and that it is only now ready to re-rent, however she provided no corroborating evidence of that. In summary, I find that there is little evidence that the Landlord attempted to mitigate her damages and as a result, her application for a loss of rental income for the period, August 1 – 21, 2011, is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee she paid for this proceeding. Consequently, the Landlord has made out a total monetary claim for \$1,108.06. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$400.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$708.06.

Conclusion

A Monetary Order in the amount of **\$708.06** will be 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: August 23, 2011.

Residential Tenancy Branch