



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 that amount. At the beginning of the hearing, the Landlord's agent said the tenancy had ended and as a result, he withdrew his application for an Order of Possession.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 26, 2011 and that according to the Canada Post online tracking system, the Tenant received this mail on July 27, 2011. 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?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2007 and ended on or about August 9, 2011 when the Tenant moved out without any notice to the Landlord. The Landlord's agent said he discovered on August 9, 2011 (when doing an inspection) that the Tenant had vacated. The rent was \$928.80 per month plus \$15.00 for parking which was due in advance on the 1st day of each month and the Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for July 2011 when it was due and as a result, on July 4, 2011, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2011 on the rental unit door. The Landlord's agent said the Tenant did not pay rent for July or August 2011.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that rent is unpaid for July and August 2011. Consequently, I find that the Landlord is entitled to recover rent and parking fees for July 2011 in the amount of \$943.80 and pro-rated rent and parking fees for the period, August 1 – 9, 2011 in the amount of \$274.01.

The Landlord's agent said the rental unit could not be re-rented until September 1, 2011 and therefore he lost rental income for the month of August 2011. 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. As a result, the earliest the Tenant could have ended the tenancy (had he given written notice on July 4, 2011) would have been August 31, 2011. Consequently, I find that the Landlord is entitled to a loss of rental income for the period, August 10 – 31, 2011 in the pro-rated amount of \$669.79.

I also find that the Landlord is entitled pursuant to s. 72(1) 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 \$425.00 plus accrued interest of \$8.09 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

July 2011 Rent:	\$943.80
Aug. 1 – 9, 2011 Rent:	\$274.01
Loss of income Aug. 10 – 31, 2011:	\$669.79
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,937.60
Less: Security Deposit:	(\$425.00)
Accrued Interest:	<u>(\$8.09)</u>
Balance Owing:	\$1,504.51

Conclusion

A Monetary Order in the amount of **\$1,504.51** has been issued to the Landlord and a copy of it must be served on 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 29, 2011.

Residential Tenancy Branch