



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 hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the rental unit on July 22, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to the male Tenant in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however this Tenant did not appear at the hearing.

The Landlord stated that on July 22, 2011 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant, via registered mail, at the forwarding address she provided. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to the female Tenant in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however this Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. He stated that copies of those documents were mailed to the Tenants at the same addresses used to serve the Application for Dispute Resolution. I find that the evidence was served in accordance with section 88(c) of the *Act* and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, loss of revenue, and damages to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on April 01, 2011; that the Tenant was required to pay monthly rent of \$1,650.00 on the first day of each month; and that the Tenant paid a security deposit of \$825.00 and a pet damage deposit of \$200.00.

The Landlord stated that the Tenant did not pay any rent for July of 2011. The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 22, 2011, was posted at the rental unit on July 12, 2011.

The Landlord stated that the Tenant vacated the rental unit sometime between July 24, 2011 and August 01, 2011. The Landlord stated that neither he nor his agent attended the rental unit between these dates, so he is uncertain when the rental unit was vacated.

The Landlord stated that the rental unit required cleaning at the end of the tenancy. The Landlord submitted photographs that corroborate this statement. He stated that the Landlord spent approximately eighteen hours cleaning the rental unit, for which he is claiming compensation in the amount of \$360.00. The Landlord submitted receipts, in the amount of \$79.54, for cleaning supplies used to clean the rental unit, for which he is claiming compensation. The Landlord submitted a receipt, in the amount of \$20.00, for dumping fees incurred when he disposed of property left at the rental unit, for which he is claiming compensation.

The Landlord stated that he had to replace some doors handles and locks because some handles/locks were broken and the keys to the unit were not returned. He stated that the Landlord spent approximately nine hours repairing the handles/locks, for which he is claiming compensation in the amount of \$180.00. The Landlord submitted a receipt, in the amount of \$117.25. He stated that items on the receipt, which cost a total of \$105.26, were used to repair the door handles/locks and that an item costing \$11.99 will be returned.

The Landlord is seeking compensation for loss of revenue for August of 2011. He stated that he could not have regained possession of the rental unit until July 25, 2011 or July 26, 2011; that he did not have time to clean the rental unit to make it presentable for showing prior to August 01, 2011; that he placed the rental unit on a popular website on August 01, 2011; and that the rental unit is not yet rented.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,650.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay rent for July. As the Tenant was required to pay rent on July 01, 2011, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,650.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a landlord may end a tenancy pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on July 12, 2011.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on July 15, 2011.

Section 46(1) of the *Act* stipulates that a Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on July 15, 2011, I find that the earliest effective date of the Notice is July 25, 2011. Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 25, 2011.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on July 25, 2011.

On the basis of the evidence presented at the hearing and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. I find that the photographs submitted in evidence indicate that significant cleaning was required and I therefore find that the Landlord's claims for \$360.00 in labour, \$79.54 in supplies, and \$20.00 in dumping fees are reasonable.

On the basis of the evidence presented at the hearing and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when

the Tenant failed to return the keys to the rental unit and to repair damaged door handles and locks. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. I find that the Landlord's claims for \$180.00 in labour and \$105.26 for supplies are reasonable.

I find that the Landlord was entitled to regain possession of this rental unit on July 25, 2011, pursuant to the Notice to End Tenancy that was served upon the Tenant. I find that this is earlier than the date the Landlord could have regained possession of the rental unit if the Tenant had provided written notice to end tenancy prior on June 30, 2011.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation must do whatever is reasonable to minimize his damage or loss. I find that the Landlord could have mitigated his loss of revenue by serving the Notice to End Tenancy in a timelier manner. Had the Landlord posted the Ten Day Notice to End Tenancy on July 02, 2011 the Landlord would have been entitled to regain possession of the rental unit prior on July 15, 2011. Posting the Notice to End Tenancy on July 02, 2011 would have enabled the Landlord to advertise the rental unit on July 02, 2011, at which point the Landlord would have had a reasonable opportunity to find a new tenant for August of 2011.

In these circumstances the Landlord made no attempt to advertise the rental unit until August 01, 2011. As the Landlord had the right to regain possession of the rental unit on July 25, 2011, I find that the Landlord should have advertised the rental unit as soon as he served the Notice to End Tenancy, as he knew, or should have known, that he had the right to possess the rental unit ten days after the Tenant received the Notice to End Tenancy.

In my view the Landlord failed to mitigate the loss of revenue he experienced for August of 2011 when he failed to advertise the rental unit in a timely manner. As the Landlord failed to mitigate his loss of revenue, I dismiss his claim for compensation for lost revenue from August of 2011.

In dismissing the Landlord's claim for compensation for loss of revenue, I placed little weight on the condition of the rental unit at the end of the tenancy, as I cannot conclude that the condition of the rental unit prevented the Tenant from advertising in a timely manner.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,444.80, which is comprised of \$1,650.00 in unpaid rent, \$459.54 for cleaning costs; \$285.26 for

repairs; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security and pet damage deposits, in the amount of \$1,025.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,419.80. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 17, 2011.

Residential Tenancy Branch