



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an order of possession, a Monetary Order for unpaid rent, authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the tenant.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, and in documentary form.

The landlord testified that he served the tenant with the Hearing Package via personal delivery on July 30, 2011. Having been satisfied the landlord served the tenant in a manner that complies with section 89 of the Act I proceeded to hear from the landlord without the tenant present.

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.

Preliminary Issue:

The Residential Tenancy Branch Rules of Procedure 3.4 states that to the extent possible, the applicant, the landlord in this case, must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

Rule 3.5 requires copies of any documents, that were not available to be filed with the application, but which the applicant, the landlord in this case, intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent, the tenant in this case, as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

Rule 11.5 states that the Dispute Resolution Officer may refuse to accept the evidence if the Dispute Resolution Officer determines that there has been a wilful or recurring failure to comply with the Act or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

In this case, the landlord submitted no evidence except the first page of a 2 page 10 Day Notice to End Tenancy for Unpaid Rent and a receipt for delivery of that document. Accordingly, I find that the landlord failed to submit relevant evidence and did not serve any evidence upon the tenant with his application. I therefore proceeded to conduct the hearing based upon the one incomplete document and the landlord's testimony.

I note the landlord stated that he was informed by the Residential Tenancy Branch that he did not need to supply any evidence for the application or hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act (the "Act")*?

Background and Evidence

According to the landlord, this one year, fixed term tenancy began on May 1, 2010, continued thereafter on a month to month basis until it ended on July 31, 2011. Monthly rent was \$1,250.00 and a security deposit of \$625.00 was paid by the tenant at the beginning of the tenancy.

The landlord's monetary claim is \$3,344.68, which included unpaid rent for July and August, a \$200.00 bill for water consumption and other lost income.

The testimony and evidence shows the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on July 13, 2011, via registered mail. The Notice listed unpaid rent due July 1, 2011, in the amount of \$1,250.00 and a water bill for \$200.00. The effective move out date was July 23, 2011.

The landlord testified that since issuance of the Notice, the tenant did not make any rent payments and vacated on July 31, 2011. Therefore, the landlord no longer requires an order of possession.

Upon query, the landlord stated that he served a demand letter on the tenant for payment of the water bill, but did not supply the same into evidence.

Upon query, the landlord could supply no evidence or testimony that he made attempts to re-rent the rental unit for the month of August.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant

cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party, the landlord in this case, has not met all four elements, the burden of proof has not been met and the claim fails.

I find the landlord, through testimony and the evidence, established that the tenant did not pay rent for July 2011, in the amount listed on the Notice, \$1,250.00. I therefore **approve** his claim for \$1,250.00.

Section 46 of the Act states that if the utility charges, in this case the water bill, are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As the landlord did not submit evidence of a written demand for the utility charges, I find the landlord failed to meet step 1 of his burden of proof and I **dismiss** his claim for \$200.00 for a water bill, **without leave to reapply**.

As to the landlord's claim for other unpaid rent, the landlord failed to submit sufficient documentary evidence that he took the necessary steps to mitigate his claimed loss by advertising and marketing of the rental unit for the month of August 2011. I therefore find the landlord has not met step 4 of his burden of proof and I **dismiss** his claim for further lost or unpaid rent, **without leave to reapply**.

As to the balance of the landlord's claim for cleaning and neglect, I find the landlord submitted insufficient evidence in support of this claim and I **dismiss** the balance of his claim, **without leave to reapply**.

I find that the landlord has succeeded in part and that he should recover the filing fee from the tenant.

I allow the Landlord to retain the security deposit of \$625.00 in partial satisfaction of the claim.

Conclusion

Monetary Order – I find that the landlord has established a monetary claim and is entitled to a monetary order as follows:

| | |
|---|--------------------------|
| Unpaid rent for July 2011 | \$1,250.00 |
| Filing Fee | <u>\$50.00</u> |
| Subtotal | <u>\$1,300.00</u> |
| Less security deposit paid | <u>\$625.00</u> |
| TOTAL Monetary Order In Favour Of The Landlord | \$675.00 |

The Landlord is hereby granted a monetary Order in the amount of **\$675.00**.

I am enclosing a monetary order for \$675.00 with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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 31, 2011.

Residential Tenancy Branch