

DECISION

Dispute Codes:

MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for unpaid rent and the cost of cleaning the rental unit at the end of the tenancy; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The parties agreed on the following facts:

- The rental unit is the basement suite of the Landlords' personal residence.
- The tenancy began on October 15, 2010. The Tenant paid a security deposit in the amount of \$360.00 at the beginning of the tenancy. The tenancy agreement fixes rent at \$725.00 per month due on the first of each month, but the parties had an oral agreement that the Tenant would pay only \$650.00 per month effective December 2010, due to his frequent absences from the rental unit.
- The Tenant wished to travel and sublet the rental unit until he returned. In mid-February, 2011, the Tenant, Landlords and the prospective subtenant met. The Landlords agreed that effective March 1, 2011, the subtenant could sublet the rental unit until the Tenant returned from his travels. No new tenancy agreement was signed with the subtenant.

The Landlord gave the following testimony:

The Landlord testified that she did not clarify that rent was to be \$725.00 for the subtenant. On March 1, 2011, the subtenant moved in. By March 6, 2011, the subtenant had still not paid March rent, so the Landlord e-mailed him asking for the rent.

On March 13, 2011, the Landlord e-mailed him again. On March 17, 2011, the subtenant paid rent in the amount of \$650.00.

The Landlord testified that on March 23, 2011, the Landlords e-mailed the Tenant and the subtenant explaining that they wished to hire a live-in nanny and that they required vacant possession of the rental unit by May 1st for her use. The Tenant responded that it was not ideal, but that he could be out if the Landlords helped him to sell his furniture. The Tenant advised them how much he wanted for the furniture. The Landlords understood that they had an agreement and started to list his furniture on popular on-line sites. Copies of these e-mails were provided in evidence.

The Landlord testified that the subtenant did not pay rent when it was due on April 1, 2011, and therefore the Landlords issued a Notice to End Tenancy for Unpaid Rent (the "Notice") on April 2, 2011. A copy of the Notice was provided in evidence. The Landlords named the Tenant on the Notice and posted it to the door of the rental unit on April 2, 2011. The Notice was effective April 24, 2011. The subtenant did not pay any rent for April and moved out of the rental unit on April 24, 2011. The nanny moved in on May 15, 2011. The Landlords seek unpaid rent in the amount of \$725.00 for the month of April, 2011.

The Landlord testified that the subtenant did not clean the rental unit before he moved out and left some garbage at the rental unit. The Landlords seek a monetary award in the amount of \$166.00 for the cost of cleaning the rental unit and disposing of the subtenant's garbage. No Condition Inspection was performed at the end of the tenancy.

The Tenant gave the following testimony:

The Tenant testified that he had agreed with the Landlords that the tenancy would end on May 1, 2011, but that he had told the Landlords that they would also have to confirm this with the subtenant. The Tenant stated that there was no mutual agreement to end the tenancy with the subtenant.

The Tenant stated that the month of April, 2011, was supposed to be rent free, pursuant to the provisions of the Act. He testified that he was unaware of the Notice until he received a copy of it in the Landlords' evidence package.

Analysis

Based on the testimony of both parties, I find that the parties agreed that the subtenant would live in the rental unit until such time as the Tenant returned from travelling abroad. The Tenant remained a tenant of the Landlord, retained a reversionary interest

in the rental unit, and remained responsible for debts and damages caused by the subtenant. It was the responsibility of the Tenant to provide the Landlord with an address for service while he was away and also the responsibility of the subtenant to advise the Tenant of the Notice to End Tenancy.

The Tenant believes that the Landlord owed the equivalent of one month's rent in compensation for ending the tenancy. There is a provision under Section 51 of the Act for the equivalent of one month's compensation to a tenant **if the tenant receives a notice under Section 49 of the Act**. Section 49(3) of the Act states:

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit **if the landlord or a close family member of the landlord** intends in good faith to occupy the rental unit.

(emphasis added)

There is no such provision in the Act for a landlord to end a tenancy because someone other than the landlord or a close family member is moving into a rental unit, such as a nanny. The Tenant did not receive a notice under Section 49 of the Act. I find that the parties mutually agreed to end the tenancy effective May 1, 2011. Neither the subtenant nor the Tenant paid rent for the month of April, 2011.

Based on the testimony and evidence of both parties, I find that the Landlords have established a monetary award in the amount of **\$650.00** for unpaid rent for the month of April, 2011.

There was insufficient evidence to support the Landlords' claim for cleaning costs and dump fees. There was no Condition Inspection performed at the end of the tenancy and no receipts for cleaning costs or dump fees provided in evidence. This portion of their claim is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I find that the Landlords are entitled to a Monetary Order against the Tenant, calculated as follows:

Unpaid rent	\$650.00
Subtotal	\$700.00
Less security deposit	- <u>\$360.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$340.00

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$340.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 13, 2011.

Residential Tenancy Branch