



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for a loss of rental income and cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's witness said on July 22, 2011 he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address provided by the Tenants on the move out condition inspection report. Section 90 of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are there rent and utility 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 compensation for cleaning and repair expenses?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on September 15, 2010 and ended on June 25, 2011 when the Tenants moved out after having been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 7, 2011. In previous proceedings heard on July 11, 2011, the Landlord was granted a Monetary Order for unpaid rent for May and June 2011 in the amount of \$950.00.

The Landlord's agent claimed that the Tenants failed to pay an electricity bill (in their name) of \$448.41, however, he did not provide a utility statement to that effect at the hearing and admitted that he was unsure if that amount had been paid by the Tenants or not. The Landlord's agent also claimed that he had an ongoing online advertisement for the rental property on Craig's List but that to date the rental unit has not been re-

rented. Consequently, the Landlord sought to recover compensation for a loss of rental income for July 2011.

The Landlord's agent also claimed that the Tenants left a number of their furnishings and some garbage behind at the end of the tenancy and that it took two people 4 ½ hours each to remove it at a cost of \$249.18. The Landlord's agent further claimed that the Tenants did not leave the rental unit reasonably clean and that it took one person 20 hours to clean it at a cost of \$560.00.

Analysis

I find that the Landlord is not entitled to recover unpaid rent for May and June 2011 because he already received a Monetary Order on July 11, 2011 for those rent arrears. I also find that there is insufficient evidence that the Tenants have utility arrears for which the Landlord is or may be liable. The Landlord's agent agreed that following the hearing he would provide a copy of the final utility billing together with written confirmation that the billing amount remains unpaid to date. Although the Landlord's agent provided a copy of the final utility bill dated July 7, 2011, he provided no evidence to show that this amount has not been paid. Consequently, the Landlord's claim for unpaid rent and utilities is dismissed without leave to reapply. However, I find that the Landlord is entitled to recover 2 late payment fees of \$25.00 each for May and June 2011 (or **\$50.00**) pursuant to a clause in the Parties' tenancy agreement to that effect.

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 in writing they are ending the tenancy. Consequently, the earliest the Tenants could have ended the tenancy as of June 7, 2011 (when they received the 10 Day Notice) would have been July 31, 2011.

However, section 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. Although the Landlord's agent claimed he continually advertised the rental property in an online publication (because he had a number of vacancies), he provided no evidence of this (such as a copy of the advertisement at the relevant time). Consequently, I find that there is insufficient evidence to conclude that the Landlord took reasonable steps to mitigate its losses and this part of its claim is dismissed without leave to reapply.

In support of his claim for cleaning and garbage removal expenses, the Landlord provided time sheets of 2 employees that show each spent 4.5 hours removing garbage. The Landlord also provided an invoice that shows 1 person spent a total of 20 hours cleaning walls. However, an agent of the Landlord completed a move out

condition inspection report with the Tenants. The report shows makes no mention of any belongings or garbage having been left in the rental unit by the Tenants at the end of the tenancy or of the rental unit requiring cleaning. Instead, the report states that the rental unit was in good condition at the end of the tenancy.

Section 21 of the Regulations to the Act states as follows:

“In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.”

I find that the Landlord's invoices and time sheets do not amount to a “preponderance” of evidence (or having superior evidentiary weight) that is necessary to displace the condition inspection report completed on behalf of the Landlord by his own agent. Consequently, I find that there is insufficient evidence to support the Landlord's claim for compensation for cleaning and garbage removal expenses and they are dismissed without leave to reapply.

The Landlord's agent also applied to recover the \$50.00 filing fee he paid for the previous proceeding in July 2011, however that application was dealt with by way of a desk order process under s. 54 of the Act which does not allow for the recovery of the filing fee and as a result, that part of his claim is dismissed without leave to reapply. As the Landlord has been unsuccessful most of its claims in this matter, I find that it is not an appropriate case to allow it to recover the \$50.00 filing fee for this proceeding and that part of the Landlord's claim is also dismissed without leave to reapply.

Consequently, the Landlord is entitled to a monetary award of \$50.00. ***I order the Landlord pursuant to sections 38(1) and (4) of the Act to keep \$50.00 from the Tenants' security deposit and to return the balance of the Tenants' security deposit of \$300.00 to them forthwith to the forwarding address they provided to the Landlord on the move out condition inspection report.***

Conclusion

The Landlord's application granted in part. A Monetary Order in the amount of **\$300.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: October 26, 2011.

Residential Tenancy Branch