



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. At the beginning of the hearing, the Landlord claimed that the tenancy has ended and as a result, his application for an Order of Possession is dismissed without leave to reapply.

The Landlord said on September 13, 2011 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail. According to the Canada Post online tracking system, the Tenant received this mail on September 22, 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?

Background and Evidence

The Landlord is the son and agent of his father who is the owner of the rental property. The Landlord said he believes the tenancy started approximately 2 years ago and ended on September 21, 2011 when the Tenant moved out without notice or returning his keys. Rent was \$925.00 per month payable in advance on the 1st day of each month. The Landlord said he is unsure if a security deposit was paid or if there was a written tenancy agreement.

The Landlord said in June of 2011 he became responsible for collecting rent in the rental property when his father was prohibited from attending the rental property. As a result, the Landlord said he became responsible for collecting rent and began reviewing his father's financial records. The Landlord said he could find no record of the Tenant having paid rent for May and June, 2011 and as a result, he asked the Tenant to produce receipts for payment of those months. The Landlord said the Tenant provided a copy of a receipt for May 2011 (with which he took no issue). However, the Landlord said his father denied signing the Tenant's receipt for June 2011 and in particular

argued that it was his practice to use only his first initial rather than to spell his name in full. The Landlord's signature on the receipt for June 2011 had his first name spelled in full.

The Landlord also said the Tenant claimed that he paid for June and July 2011 by way of a cheque in the amount of \$1,800.00 issued by a third party to the Landlord's father or his spouse. The Landlord said the Tenant could not provide a receipt for rent for July 2011 and the Landlord said he could find no deposit for \$1,800.00 during the relevant time period. Consequently, the Landlord said he believes rent for June and July 2011 has not been paid as the Tenant claimed. The Landlord said the Tenant has not paid rent for August and September 2011 and as a result, on September 2, 2010, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2011. The Landlord said the Tenant moved out on September 21, 2011.

Analysis

The Landlord said the Tenant resided in the rental unit with another tenant (S.Y.) but he was unsure if the tenants were joint tenants and therefore jointly liable for paying the rent. However, in previous proceedings heard on August 17, 2011, the Landlord applied to recover unpaid rent of \$6,615.00 (or the total rent for the rental unit) from the tenant, S.Y. On his application in that matter filed on July 18, 2011, the Landlord alleged that the amount of the unpaid rent arrears was for a period in excess of 6 months. In support of that application, the Landlord also relied on a 10 Day Notice dated July 4, 2011 that alleged there was unpaid rent of \$6,615.00. The Landlord did not attend the hearing on August 17, 2011 and his application was dismissed.

In this matter, the Landlord now seeks to recover unpaid rent for June and July 2011 from the Tenant, G.R. I find on a balance of probabilities however that the Landlord is barred from seeking that relief due to the principle of *res judicata* which holds that a party cannot litigate a matter that has already been adjudicated upon. In particular, I find that as the Landlord was seeking the full amount of rent from the other tenant, he took the position that the tenants were joint tenants. I also find that the Landlord could have named all tenants who were liable for the full amount of the alleged rent arrears in the previous hearing but he failed to do so. I further find on a balance of probabilities that the amount sought in the previous proceedings by the Landlord included rent arrears for June and July, 2011. Consequently, I find that the Landlord cannot re-litigate the issue of the rent arrears for June and July 2011 in this matter by bringing the exact same claim against the other joint tenant. As a result, the Landlord's claim for unpaid rent for June and July 2011 is dismissed without leave to reapply.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover rent arrears for August and September 2011 in the total amount of \$1,850.00. 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 he paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,900.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by 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: October 17, 2011.

Residential Tenancy Branch