



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's agent said the tenancy has ended and as a result, her application for an Order of Possession is dismissed without leave to reapply.

The Landlord's agent said on September 27, 2011 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address provided by the Tenant. According to the Canada Post online tracking system, the Tenant received this mail on September 28, 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

This fixed term tenancy started on July 1, 2011 and was to expire on June 30, 2012 however it ended on September 17, 2011 when the Tenant moved out. Rent was \$1,200.00 per month. The Landlord's agent said the Tenant did not pay rent for September 2011 when it was due and as a result on September 2, 2011, she posted a 10 Day Notice to End Tenancy for unpaid rent or utilities on the rental unit door. The Landlord said the Tenant did not pay rent for September 2011 and she was unable to re-rent the rental unit for the balance of September 2011 (after the Tenant vacated it on September 17, 2011).

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover unpaid rent for the period, September 1 – 17, 2011, in the pro-rated amount of \$680.00.

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. Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. Consequently, the earliest the Tenant could have ended the tenancy would have been June 30, 2012. However, s. 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.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord was unable to re-rent the rental unit for part of the month of September 2011 and as a result, I find that the Landlord is also entitled to compensation for a loss of rental income for the period, September 18 – 30, 2011 in the pro-rated amount of \$520.00. I further find that the Landlord is entitled to recover a late payment fee of \$25.00 pursuant to a clause in the Parties' tenancy agreement to that effect. The Landlord is also entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee she paid for this proceeding.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$1,275.00** 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 24, 2011.

Residential Tenancy Branch