



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 is the Landlord's application for a Monetary Order for unpaid rent and unpaid utilities; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were sent, via registered mail, on July 18, 2011 to the Tenant at the forwarding address she provided on the Condition Inspection Report. The Landlord's agent provided the tracking number for the registered documents. The Landlord's agent testified that the documents were returned "refused".

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served, pursuant to the provisions of Section 89(1)(c) of the Act. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the document. This deeming provision is in effect whether or not the recipient chooses to accept delivery. In spite of being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order against the Tenant pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

The parties signed a one year lease on August 8, 2010. The lease began on September 1, 2010 and expired on August 31, 2011. Monthly rent was \$895.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$447.50 at the beginning of the tenancy. A copy of the tenancy agreement was provided in evidence.

On or about June 1, 2011, the Tenant gave the Landlord written notice that she was ending the tenancy effective July 1, 2011. A copy of the Tenant's notice to end the tenancy was provided in evidence. The Tenant moved out of the rental unit on June 30, 2011. The Landlord re-rented the rental unit effective August 1, 2011, for \$895.00 per month.

The Landlord's agent testified that the Tenant paid rent for June, 2011, but not for July, 2011, and the Landlord seeks to recover that loss of revenue in the amount of **\$895.00**. The Landlord's application also claims \$155.25 in unpaid utilities. The Landlord's agent testified that the Tenant paid \$150.00 of the utility bill, so the Tenant only owes **\$5.25** for utilities.

Analysis

The tenancy agreement includes the following provisions: "Move-In Special: Last Month Free!*" and "*Move-In Special is not convertible to cash, is usable for rent only, and must be taken in the month specified or else it will be forfeited." There is no other provision in the tenancy agreement with respect to the move-in special. The tenancy agreement does not specify the month by name, it merely states "last month free".

The Landlord's agent testified that the rental unit was re-rented for August 1, 2010, at the same rent as the Tenant was paying.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], **if damage or loss results** from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

(emphasis added)

I find that the Tenant ended the lease early contrary to the tenancy agreement however the Landlord did not suffer a loss. I find that the Tenant was entitled to the "last month free" (in this case June, 2011). The Tenant paid rent for the last month of the tenancy. The Landlord was paid rent for the month of August, 2011, by the new tenant and was placed in the same financial position as if the Tenant had remained in the rental unit for the term of the tenancy. Therefore, the Landlord's application for loss of revenue is dismissed.

With respect to the Landlord's application for unpaid utilities, the Landlord did not provide sufficient evidence to prove this claim (for example, a copy of the utility bill). This portion of its application is also dismissed.

The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenant.

The Landlord is holding the security deposit in the amount of \$447.50 and I order the Landlord to return it to the Tenant within 15 days of receipt of this Decision. I hereby provide the Tenant with a Monetary Order in the amount of **\$447.50** against the Landlord.

Conclusion

The Landlord's application is dismissed in its entirety.

I hereby provide the Tenant a Monetary Order in the amount of **\$447.50** for service upon the Landlord. This Order 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: October 19, 2011.

Residential Tenancy Branch