

DECISION

Dispute Codes:

OPR; MNR; MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he served the Notice of Hearing Documents on the Tenants AD and FA by registered mail sent on October 13, 2011. The Landlord provided a copy of the receipts and tracking numbers in evidence. The Landlord testified that he served the Notice of Hearing Documents on the Tenants CO and MN by handing them the documents at the rental unit on October 12, 2011, with two witnesses present.

The Landlord testified that he served the Tenants CO and MN with copies of his documentary evidence by handing them the documents at the rental unit on October 24, 2011. He testified that he served the Tenants AD and FA with copies of his documentary evidence by registered mail sent on October 24, 2011, but that the documents were refused by the Tenants on October 26, 2011.

Based on the Landlord's affirmed testimony and the documentary evidence provided by the Landlord, I am satisfied that the Tenants were duly served with the Notice of Hearing documents pursuant to the provisions of Section 89 of the Act. Despite being served with the Notice of Hearing documents, none of the Tenants signed into the teleconference and the Hearing proceeded in their absence.

Preliminary Matters

At the outset of the Hearing, the Landlord testified that the Tenants moved out of the rental unit on or about November 1, 2011. He stated that he last saw them on October 24, 2011, when he went to drop off documentary evidence at the rental unit. He stated that he was at the rental unit at the end of October and saw a note on the door that the Tenants were moving out on November 1, 2011. The Landlord stated that he no longer needs an Order of Possession of the rental unit because he has taken back possession, and therefore was withdrawing this portion of his application.

Issues to be Decided

- Was there a tenancy agreement between the Landlord and the Tenants?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony and evidence:

The Landlord stated that the Tenants moved into the rental unit while his previous tenant ("Paul") was living there, without the knowledge of the Landlord. The Landlord stated that the Tenants AD and FA had given him Paul's rent money for June or July, 2011, but that he did not know that they were living at the rental unit. The Landlord stated that he believed they were just paying rent on Paul's behalf. Paul paid rent in the amount of \$2,500.00 per month, not including utilities, due on the first day of each month. A copy of the tenancy agreement between the Landlord and Paul was provided in evidence. The Landlord testified that the utility bills were in his name.

The Landlord stated that Paul moved out at some point after July, 2011, without giving the Landlord notice. The Landlord stated that he was unaware that Paul had moved until the end of August or the beginning of September, 2011. The Landlord stated that in September, 2011, he went to the rental unit and there were 15 people in the house. The Tenants AD and FA gave the Landlord September rent money in the amount of \$2,500.00. The Landlord did not know their names and they refused to tell him. The Landlord told them if they wanted to stay they would have to sign a tenancy agreement and provide him with their names.

The Landlord testified that on October 3, 2011, he went to the rental unit again and brought three people with him. This time there were fewer people there, but they refused to sign a tenancy agreement and refused to pay the rent. The Landlord testified that he called the police to have them thrown out, but the police said they would not interfere with a residential tenancy matter and that the Landlord would have to apply to the Residential Tenancy Branch. The Landlord testified that before the police left, they made the people give him their names.

The Landlord testified that there was lots of garbage and the house was a mess. The Landlord asked to keep the security deposit of \$1,250.00 that Paul had left in order to help pay for damages and clean-up. The Landlord seeks a monetary award for unpaid utility bills, which he testified he provided to the Tenants on September 17 (hydro bill) and October 18, 2011 (gas bill). The Landlord provided copies of two estimates for repairs to the rental unit, copies of utility bills and photographs in evidence.

The Landlord seeks a monetary award as follows:

October rent	\$2,500.00
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Outstanding gas bill	\$43.72
B.C. Hydro bill	\$86.50
Estimate for repairs	<u>\$2,875.00</u>
	\$5,505.22

The Landlord testified that he is abandoning any amount over \$5,000.00.

Analysis

Based on the Landlord's undisputed testimony, I find that the Landlord was aware in late August or early September that Paul had moved without notice. I find that, by accepting rent money from the Tenants AD and FA for the month of September, he created an oral tenancy agreement with the Tenants AD and FA only. I find that the Tenants CO and NM were not "tenants" as defined by the Act. Therefore the Landlord's application against CO and NM is dismissed.

I accept the undisputed testimony of the Landlord that the Tenants AD and FA lived with Paul prior to Paul moving out without notice. I find that it is reasonable to conclude that the Tenants AD and FA were aware of the terms of the tenancy agreement between the Landlord and Paul with respect to the amount of rent and the fact that Paul was responsible for paying utilities. Therefore, I find that monthly rent under the oral tenancy agreement was \$2,500.00 per month (the amount paid by the Tenants AD and FA in September), not including utilities. I find that the Tenants AD and FA did not pay a security deposit to the Landlord. The Landlord's application to offset Paul's security deposit is dismissed. Paul's security deposit must be administered in accordance with the provisions of Sections 38 and 39 of the Act.

The Landlord has applied for unpaid utilities, as follows:

Gas (September 13 to October 13, 2011)	\$43.72
Hydro bill (July 15 to September 13, 2011)	\$86.50

I find that the Tenants AD and FA are responsible for the bill for gas that was consumed while they were tenants, in the amount of **\$43.72**. I find that the Tenants AD and FA are responsible for a portion of the hydro bill for the period of time covered by the bill that they were tenants (September 1 to September 13). I calculate that amount as follows:

$$\$86.50 / 61 \text{ days} \times 13 \text{ days} = \mathbf{\$18.43}$$

In support of the Landlord's application for a monetary award for damages to the rental unit, the Landlord provided photographs of the rental unit and a copy of the move-in

Condition Inspection Report that was performed and signed by the Landlord and Paul at the beginning of Paul's tenancy. There was no move-in inspection performed at the beginning of the Tenants' tenancy, as required by the Act, and therefore insufficient evidence that the Tenants are responsible for the damages to the rental unit as depicted in the photographs. Therefore this portion of the Landlord's application is dismissed.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenants AD and FA.

The Landlord has established a monetary claim as follows:

Unpaid rent	\$2,500.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$2,612.15

Conclusion

The Landlord's application against the Tenants CO and NM is dismissed without leave to reapply, as I find they were not "tenants" as defined by the Act.

The Landlord's application for an Order of Possession was withdrawn as the Tenants have moved out and the Landlord has taken back possession of the rental unit.

The Landlord's application for a monetary award for damages is dismissed.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,612.15** for service upon the Tenants AD and FA. 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: November 09, 2011.

Residential Tenancy Branch