



Dispute Resolution Services

Page: 1

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 Landlords for a Monetary Order for unpaid rent, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords' application named two parties as Tenants, namely, T.L. and P.H. The Landlords said they named P.H. as a Tenant because on one occasion at the end of June 2011, he offered to make a partial payment of rent. The Tenant argued that P.H. was not a tenant because he stayed in the rental unit only occasionally as a guest of hers. P.H. claimed that throughout much of the tenancy he maintained a residence elsewhere. In the circumstances, I find that P.H. is not properly named as a party in these proceedings and the style of cause is amended by removing him as a Tenant.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on December 1, 2010 and ended on or about July 15, 2011 when the Tenant moved out. Rent was \$475.00 per month payable at the end of the month for which it applied (or not in advance of each month). Rent included the exclusive use of a bedroom and the shared use of common areas in the basement suite of a house with another tenant of that suite. The Tenant paid a security deposit of \$237.50 at the beginning of the tenancy.

The Landlords claim that the Tenant did not pay rent in April 2011 when it was due. The Landlords said the Tenant agreed to make up the rent by August 2011 by making periodic payments. The Landlords also said that the Tenant made a full rent payment in May 2011 which was applied to April rent and a payment of \$590.00 on June 24, 2011 (\$475.00 of which was applied to rent for May 2011 and \$115.00 of which was applied to rent for June). Consequently, the Landlords said the Tenant had rent arrears of

\$360.00 for June 2011. The Landlords said they served the Tenant on July 7, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 7, 2011 by posting it to the rental unit door. The Landlords said the Tenant did not pay the overdue rent for June and did not pay rent for July 2011. The Landlords further said that the rental unit was re-rented for August 1, 2011.

The Tenant claimed that the Landlords did not provide her with receipts for her rent payments she made in cash and she believed that she had paid up her rent to and including June 2011. The Tenant said she planned to move out at the end of July 2011 and to pay the rent for that month however when she was served with the 10 Day Notice on July 7, 2011, she believed it meant that if she moved out by the effective date she would not be responsible for paying the rent for that month.

Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that there are rent arrears for June and July 2011. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 26(2) of the Act says that a Landlord must provide a Tenant with a receipt for rent paid in cash. The Landlords admitted that they did not give the Tenant receipts for her rent payments for the period December 2011 – May 2011 until sometime in June 2011. The Landlords said they did not do so due to the irregularity of the Tenant's rent payments. The Tenant claimed that her rent payments were not irregular until April 2011 and argued that the Landlords failed to give her receipts for other payments made by her however she provided no documentary evidence of those alleged other payments. The Tenant's agent claimed that the Tenant's father provided her with funds to pay up her rent however he admitted that he did not have firsthand knowledge of this.

The Landlords did not provide any financial records other than rent receipts. I find that these records are not a reliable indicator of whether the Tenant had rent arrears or not because most of them were issued retroactively and not at the time the payments were made. Given the lack of reliable financial records and the contradictory evidence of the Tenant, I find that there is insufficient evidence to conclude that there are rent arrears for June 2011.

However, the Parties agree that the Tenant did not pay rent for July 2011. 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 they are ending the tenancy. Given that the Tenant was served

with the 10 Day Notice on July 7, 2011, the earliest the Tenant could have ended the tenancy (had she given notice on that day) would have been August 31, 2011. As a result, I find that the Landlords are entitled to recover rent and a loss of rental income for July 2011 in the total amount of \$475.00.

Section 7 of the Regulations to the Act says that late fees of no more than \$25.00 are only recoverable if there is a term in the Parties' tenancy agreement to that effect. I find that the Parties did not have a written tenancy agreement and therefore I also find that the Landlords are not entitled to recover a late payment fee of \$25.00. I find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee they paid for this proceeding. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$237.50 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$287.50.

Conclusion

A Monetary Order in the amount of **\$287.50** has been issued to the Landlords 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: January 30, 2012.

Residential Tenancy Branch