



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began February 1, 2005 with monthly rent of \$725.00 and the tenants paid a security deposit of \$350.00.

The landlord confirmed at the start of the hearing that the tenants vacated the rental unit on December 26, 2011 and as the landlord has possession of the rental unit the landlord no longer requires an order of possession. This portion of the landlord's application is therefore dismissed.

The landlord testified that the tenants had been served with an eviction notice effective December 31, 2011. The landlord stated that the tenants then vacated the rental unit with no notice to the landlord on December 26, 2011 and did not return to complete a move out inspection. The landlord stated that when the tenants vacated they provided the landlord with a PO box for their forwarding address and a request for return of the security deposit plus \$32.16 in interest.

The landlord stated when the tenants vacated the rental unit there was \$760.00 owing in unpaid rent and 12 days of unpaid utilities. The landlord stated that as of yesterday the tenants still owed \$48.71 on the gas bill and \$16.00 on the hydro bill. The landlord stated that the utility companies had advised him that as they did not have the tenant's

forwarding address the unpaid utilities would be attached to the landlord's bill for payment.

The tenant testified that the December 2011 rent had not been paid and acknowledged that there were gas and hydro bills unpaid. The tenant stated that he wife had taken care of the unpaid bills in January 2012 and that the utility companies had their forwarding address. The tenant could not confirm if the utility bills had in fact been paid.

As the parties have very different views on the status of the utility bills, both parties agreed to contact the utility companies and that the tenant would make arrangements for the unpaid utility bills to be sent to them for payment. The landlord agreed to withdraw this portion of the application with leave to reapply if the utility bills remain unpaid by the tenants.

The tenant stated that the original tenancy agreement entered into with the previous owner/landlord noted that 3% interest would be paid on the security deposit for the duration of the tenancy. The tenant stated that the landlord had advised him that he would agree to this interest calculation if the tenant provided proof. The tenant stated that he submitted a copy of the tenancy agreement into evidence however that documentation is not in this file.

The tenant then brought up the issue of unpaid wages and was advised that this office does not have jurisdiction over such matters and that if the tenant believed the landlord owed him compensation in relation to this tenancy that he was at liberty to make his own application through this office.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The tenants did not pay the December 2011 rent which resulted in a loss of \$760.00 rental income to the landlord.

In regards to the interest due on the \$350.00 security deposit, I find that the legislation takes jurisdiction on the amount of interest to be paid and that any other amount of interest to be paid is an unconscionable term not unlike a rent increase over and above what the legislation allows.

Residential Tenancy Regulation **Section 3 Definition of "unconscionable"** speaks to: *For the purposes of section 6 (3) (b) of the Act [unenforceable term], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.*

Accordingly I find that the landlord is entitled to a monetary order for \$760.00.

The landlord in this application refers to recovery of a \$50.00 filing fee from a previous application which I decline.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$760.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$350.00 security deposit and \$32.16 in interest, in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$427.84**.

If the amount is not paid by the tenant(s), 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: February 15, 2012

Residential Tenancy Branch