

DECISION

Dispute Codes:

OPR; MND; MNR; MNDC, MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue, to retain the security deposit in partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he personally served the Tenant with the Notice of Hearing documents at the Tenant's work place on November 20, 2011. Based on the affirmed testimony of the Landlord, I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act. The Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Preliminary Matter

The Landlord testified that the Tenant moved out of the rental unit on May 25, 2011. Therefore the Landlord's application for an Order of Possession is dismissed.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order against the Tenant for unpaid rent and loss of revenue; unpaid utilities; and damage to the barn?

Background and Evidence

The Landlord gave the following testimony and evidence:

The Landlord stated that when he served the Tenant with the Notice of Hearing documents, the Tenant stated that he was in bankruptcy, but that the Tenant did not provide him with proof.

The Landlord testified that he had issued a One Month Notice to End Tenancy for repeated late payment of rent on March 31, 2011, and a 10 Day Notice to End Tenancy for Unpaid Rent on April 11, 2011. The Landlord provided copies of both Notices in evidence, along with a copy of a Proof of Service document for the Notice issued April 11, 2011. The Landlord testified that he previously filed two Applications for Dispute Resolution, but missed both Hearings.

The Landlord testified that there was no written tenancy agreement. He stated that the tenancy started in March, 2010, and that rent was \$2,500.00 which included a house and a barn. The Landlord testified that the Tenant paid a security deposit in the amount of \$750.00.

The Landlord testified that he worked with the Tenant, who “came back to work at the end of October or beginning of November”. He stated that when the Tenant moved out of the rental unit, he left a lot of his possessions in the barn. The Landlord stated that the Tenant was living in his van and that he called the Tenant on his cell phone many times to come and get his stuff out of the barn. The Landlord testified that the Tenant came back and forth over the next while to pick up stuff, but that he didn’t have all of his possessions out of the barn until July 7, 2011. The Landlord testified that the Tenant left a lot of garbage at the rental property and damaged the barn.

The Landlord testified that he re-rented the house in July, 2011. He stated that the new occupant signed a 5 year lease which included the barn, but only paid \$1,250.00 rent for July because the barn was not available because of the Tenant’s stuff. The Landlord testified that the new occupant now pays \$2,000.00 per month for the house and the barn.

The Landlord testified that the Tenant did not pay the cable bill, which included charges for renting movies and projectors, or the hydro bill. The Landlord testified that the hydro bill is in his name and that he received demands from a collection agency for \$304.80 in unpaid hydro. The Landlord provided a copy of a demand letter from the collection agency in evidence. He also provided a copy of a cable bill in the amount of \$338.56, and a copy of a “Subscriber Information” printout from the cable company dated April 4, 2011, in the amount of \$759.11, which he testified was also the Tenant’s responsibility.

The Landlord indicated on his Application for Dispute Resolution that he seeks a monetary award against the Tenant, calculated as follows:

Unpaid rent for February, 2011	\$400.00
Loss of revenue for July, 2011 (barn)	\$1,250.00
Unpaid hydro for April, 2011	\$304.80
Cable bill for May, 2010	\$338.56
Cable bill for April, 2011	\$759.11
Damage to the barn	\$1,150.00
Garbage disposal	<u>\$250.00</u>

TOTAL CLAIM	\$14,452.47
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Analysis

A search of the Residential Tenancy Branch records indicates that there have been three prior Hearings with respect to this tenancy regarding the 10 Day Notice to End Tenancy issued April 11, 2011 (the "Notice"):

1. May 18, 2011 – The Landlord attended the Hearing. The Tenant did not sign into the Hearing. The Dispute Resolution officer found that the Tenant was served with the Notice of Hearing documents and the matter was heard in the Tenant's absence. There was no documentary evidence filed in support of the Landlord's application for an Order of Possession and monetary order for rental arrears and unpaid utilities. The Dispute Resolution Officer made no findings on the merit of the Landlord's application and dismissed his application with leave to reapply.
2. June 10, 2011 – Neither party signed into the conference. The Landlord's application for an Order of Possession and a monetary order was dismissed with leave to reapply.
3. July 19, 2011 – Neither party signed into the conference. The Landlord's application for an Order of Possession and a monetary order was dismissed with leave to reapply.

The Tenant did not file his own Application for Dispute Resolution to cancel the Notice or dispute the rental arrears. I accept the Landlord's undisputed testimony that monthly rent was \$2,500.00 and that the Tenant was in arrears in the amount of **\$5,400.00** on April 1, 2011. Based on the undisputed testimony of the Landlord, I find that the Landlord is also entitled to loss of revenue for the month of May, 2011, in the amount of **\$2,500.00**.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different essential elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord did not provide sufficient evidence to prove the remainder of his application for the following reasons:

- The Landlord did not provide proof that he took steps to mitigate his loss of revenue for the months of June and July, 2011 (for example, copies of newspaper or on-line ads seeking a new tenant). The Landlord did not provide sufficient evidence regarding the amount of possessions the Tenant left in the barn, or any explanation as to why they could not have been removed and stored by the Landlord so that the barn was available for his new tenant. The Landlord seeks compensation in the amount of \$1,250.00 for loss of revenue with respect to the barn for the whole month of July, 2011, however the Landlord testified that the barn was empty on July 7, 2011. The Landlord did not provide sufficient evidence that the barn could not have been used, and paid for per diem, by the new tenant for the remainder of July, 2011. Furthermore, the Landlord testified that the new occupant is paying a total of \$2,000.00 per month, and paid \$1,250.00 for July, 2011. Therefore, the portion of rent unpaid by the new tenant is only \$750.00, not the \$1,250.00 as claimed by the landlord.
- The Landlord did not provide sufficient evidence to support his claim in the amount of \$1,150.00 for damage to the barn (for example, no Condition Inspection Report at the beginning or end of the tenancy and no copies of invoices with respect to amounts paid to repair the barn). Nor did the Landlord provide a copy of a receipt in the amount of \$250.00 for dumping fees.
- The Landlord's Application for Dispute Resolution indicates that the unpaid hydro is for the month of April, 2011, but the copy of the demand letter from the collection agency for unpaid hydro is dated February 16, 2011. The demand letter is addressed to the Landlord at a different address from the rental unit and there is no indication on the demand letter for which address the unpaid hydro is outstanding. No copy of the actual hydro bill was provided indicating the address of the rental unit.
- The Landlord did not provide a complete copy of the cable bill in the amount of \$338.56 which he claims the Tenant owes. He provided the lower tear-off portion of the bill, which includes the Landlord's name and another address. It also indicates that the amount was due on May 24, 2010, which is one year before the end of the tenancy. The Subscriber Information from the cable company is addressed to the Landlord and indicates that \$1,752.49 was owed as at April 7, 2011, prior to the return of some equipment. After a credit adjustment, the total paid by the Landlord was \$759.11. There is insufficient evidence that the

balance showing on the Subscriber Information does not include the outstanding amount of \$338.56 from May, 2010. A copy of the cable bill, in its entirety, would be available to the Landlord at his request. The documentary evidence provided is confusing and incomplete.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord sought to recover the cost of the filing fee for his three previous applications, but those applications were dismissed and therefore I dismiss this portion of the Landlord's claim. The Landlord has been successful in this application and is entitled to recover the cost of the **\$100.00** filing fee from the Tenant.

Based on the undisputed testimony of the Landlord, I find that the Landlord has established a monetary claim as follows:

Loss of revenue	\$2,500.00
Unpaid rent	\$5,400.00
Recovery of the filing fee	<u>\$100.00</u>
Subtotal	\$8,000.00
Less security deposit	<u>- \$750.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$7,250.00

Conclusion

The Landlord's application for an Order of Possession is dismissed.

I hereby grant the Landlord a Monetary Order in the amount of **\$7,250.00** for service upon the Tenant. 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: January 03, 2012.

Residential Tenancy Branch