



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?

Background and Evidence

This tenancy started as a fixed term tenancy on September 1, 2009 which expired on January 31, 2010 and continued on a month-to-month basis. The tenancy ended on December 3, 2011 when the Tenant moved out. Rent was \$875.00 per month payable in advance on the 1st day of each month plus 45% of the utilities for the rental property. The Tenant paid a security deposit of \$437.00 at the beginning of the tenancy and gave the Landlord written authorization to keep it at the end of the tenancy for unpaid rent.

The Landlord said the Tenant did not pay rent for August and September, 2011 when it was due. The Landlord said the Tenant made a partial payment of \$812.00 on September 27, 2011 but then did not pay rent for October or November 2011. The Landlord said the Tenant told him in mid-November 2011 that she might be moving out at the end of November and she verbally confirmed this on November 22, 2011. The Landlord served the Tenant on November 23, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 23, 2011. The Landlord also claimed that the Tenant did not give him written notice she was ending the tenancy. The Landlord said he began advertising the rental unit in an online publication commencing November 24, 2011 but was unable to re-rent the unit December 2011 and lost rental income for that month.

The Tenant argued that she should not be responsible for December 2011 rent because she tried to give the Landlord written notice in mid-November 2011 but he would not accept it. The Tenant also argued that she was not responsible for rent for December

because she also advertised the rental unit and showed it and moved out by the effective date of the 10 Day Notice.

Analysis

I find that there are rent arrears as follows:

	August 2011:	\$875.00
	September 2011:	\$875.00
	October 2011:	\$875.00
	November 2011:	\$875.00
Less:	Payment:	(\$812.00)
	Security deposit:	(\$437.00)
	Accrued Interest:	(\$0.00)
	Subtotal:	\$2,251.00

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.

This means, that if the Tenant wanted to end the tenancy at the end of November 2011, she would have had to give the Landlord **written notice no later than October 31, 2011**. However, I find that the Tenant did not give the Landlord written notice to end the tenancy but instead the Landlord served the Tenant on November 23, 2011 with a 10 day Notice to End Tenancy. Had the Tenant given written notice on that date, the earliest she could have ended the tenancy would have been December 31, 2011. Consequently, I find that the Landlord is entitled to recover loss of rental income for December 2011 in the amount of \$875.00.

The Landlord also sought to recover late fees pursuant to a term of the tenancy agreement that provides for "an initial charge of \$8.00 plus \$3.00 per day for every day the rent is late." Section 7 of the Regulations to the Act says that a Landlord may recover a late fee of no more than \$25.00 provided that there is a term in the Parties' tenancy agreement to that effect. Given that the Landlord has made a claim for late fees in the amount of \$96.00 for September, \$62.00 for October and \$60.00 for November, 2011, I find that this term of the tenancy agreement contravenes s. 7 of the Regulations to the Act and pursuant to s. 5 of the Act, it is of no force and effect. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee he paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$3,176.00** has been issued to the Landlord 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: February 06, 2012.

Residential Tenancy Branch