



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MNDC, MNSD; FF

Introduction

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

The parties gave affirmed testimony at the Hearing.

Preliminary Matter

At the outset of the Hearing it was determined that the Tenant moved out of the rental unit on January 15, 2012. Therefore, the Landlord's application for an Order of Possession is not longer required and is dismissed.

The Hearing continued with respect to the remainder of the Landlord's application

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and loss of revenue for the months of December, 2011 and January, 2012?
- Is the Landlord entitled to liquidated damages as a result of the Tenant ending the tenancy before the term expired?

Background and Evidence

This tenancy started on November 1, 2011, for a fixed term ending October 31, 2012. A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,300.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 at the beginning of the tenancy.

The Landlord's agent gave the following testimony and evidence:

The Landlord's agent testified that the Tenant paid only \$200.00 in rent for the month of December, 2011. She testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent on December 5, 2011. A copy of the Notice was provided in evidence.

The Landlord's agent testified that she posted the Notice to the Tenant's door on December 5, 2011.

She stated that the rental unit was re-rented effective January 15, 2012, for \$1,300.00 per month, and that the new occupant paid pro-rated rent in the amount of \$650.00 for January, 2012.

The Landlord's agent seeks liquidated damages in the amount of \$400.00 pursuant to a clause in the tenancy agreement.

The Landlord's agent testified that the Landlord is seeking a monetary award, as follows:

Unpaid rent for December, 2011	\$1,100.00
Loss of revenue for January, 2012	\$650.00
Liquidated damages	<u>\$400.00</u>
TOTAL	\$2,150.00

The Tenant gave the following testimony:

The Tenant agreed that she had paid only \$200.00 towards December, 2011 rent and that she remained in the rental unit until the new occupant moved in on January 15, 2012.

Analysis

I accept the Landlord's agent's testimony that the Notice to End Tenancy was posted to the Tenant's door on December 5, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected 3 days after posting. Therefore, I find that the tenancy ended on December 18, 2011, and that the Tenant was overholding.

Based on the testimony of both parties, I find that the Landlord's agent has established a monetary claim against the Tenant for unpaid rent for the month of December, 2011, in the amount of \$1,100.00 and loss of revenue for the month of January, 2012 in the amount of \$650.00.

There is a clause in the tenancy agreement that provides that the Tenant pay liquidated damages in the amount of \$400.00 if the Tenant ends the tenancy before the term expires, or if the Tenant breaches a material term of the tenancy agreement which causes the Landlord to end the tenancy before the term expires. I find that payment of

rent is a material term of the tenancy agreement and that the Tenant breached that term. I find that the liquidated damages clause is a valid clause. Therefore, I find that the Landlord is entitled to this portion of its monetary claim.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of its monetary award.

The Landlord has been successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

I provide the Landlord a Monetary Order against the Tenant, calculated as follows:

Unpaid rent and loss of revenue	\$1,750.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,200.00
Less security deposit	<u>- \$650.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,550.00

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,550.00** 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: February 06, 2012.

Residential Tenancy Branch