



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for 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 June 1, 2011 with monthly rent of \$700.00 and the tenant paid a security deposit of \$350.00.

The landlord testified that on October 2, 2011 the tenant gave the landlord verbal notice to vacate the rental unit October 31, 2011. The landlord clarified with the tenant that written notice was required and that the October 2, 2011 notice would result in an end of tenancy date of November 30, 2011. The tenant responded by stating that she had wanted to provide notice to the landlord in person as she knew the landlord would be upset that she was vacating the rental unit.

The landlord stated that the tenant vacated the rental unit October 31, 2011 and did not pay the \$700.00 November 2011 rent as required by the Act. The landlord stated that the tenant also owes unpaid utilities in the amount of \$468.50.

The landlord stated that there are 4 rental units that run off a large propane tank. The landlord stated that each unit has a separate meter which is read and the amount due calculated out for each tenant. The tenant acknowledged that she had always received the propane bill this way but challenged the landlord's calculation as the bill had gone up in October.

The tenant testified that she did not believe that the landlord had taken steps to secure new tenants for November 1, 2011 therefore the landlord should not be awarded the November rent. The tenant stated that she could not find any ads for the rental unit until October 18, 2011 and that ad was promptly taken down. The tenant stated that on October 24, 2011 she called the landlord to check on the status of getting a new tenant and was advised by the landlord that someone had called but that the landlord did not call them back. The tenant stated that she then offered to advertise the rental unit and find a new tenant for the landlord. The tenant stated that during the month of October the rental unit was not shown to any prospective tenants.

The landlord stated that her husband had placed rental ads for the rental unit but that she did not note the dates that any of the ads had been placed. The landlord stated that the rental unit was also advertised by word of mouth and with construction companies. The landlord stated that the rental unit remains vacant.

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 utilities in the amount of \$468.50.

The tenant acknowledged that the October 2011 propane bill was not paid and I am satisfied with the landlord's calculation of the propane bill.

In regards to the landlord's claim for the November 2011 rent in the amount of \$700.00, I find that the landlord has not proven that steps were taken to mitigate any loss in relation to the rental unit being vacant in November 2011. It is acknowledged that the tenant did not provide proper notice to the landlord however a landlord still has a duty to mitigate their loss. The landlord's testimony at best is very limited when providing evidence how and when the rental unit was being advertised for rent. That in combination with the testimony that there had been an interested tenant but the landlord did not bother to call the tenant back points to the landlord not taking steps to mitigate their loss. Therefore the landlord's claim for loss of the November 2011 rent is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Accordingly I find that the landlord is entitled to a monetary order for \$468.50.

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 \$468.50 in unpaid utilities. 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 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$168.50**.

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: March 6, 2012

Residential Tenancy Branch