



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing for dispute resolution under the Residential Tenancy Act (the “Act”) dealt with the landlord’s application, seeking a monetary order for unpaid rent or utilities and for recovery of the filing fee.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to receive a monetary order for loss of rent revenue and utilities and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement; however the landlord stated that the tenancy began on August 19, 2011, and the tenant stated that tenancy began on August 27, 2011. The landlord claims that the parties intended a one year, fixed term tenancy and the tenant claimed that the house was on the market for sale when she began the tenancy, and that the agreement was that the tenancy was on a month to month basis.

I heard testimony that the monthly rent was \$1,600.00 plus utilities.

The tenancy ended on October 31, 2011.

The landlord’s monetary claim is in the amount of \$1922.21, which includes loss of revenue for November 2011, in the amount of \$1600.00 and unpaid utilities of \$322.21. The landlord also seeks recovery of the filing fee of \$50.00.

In support of his application, the landlord submitted that he is entitled to loss of revenue for November 2011, due to the tenant’s insufficient notice in ending the tenancy. The

landlord contended that the tenant initially gave notice, on October 13, 2011, that she was ending the tenancy on November 20, 2011 and that she would pay rent for November.

The landlord claimed that the next notice to end the tenancy given by the tenant came on October 21, 2011, effective October 31, 2011, which was insufficient notice in ending a tenancy, entitling him to loss of revenue for November 2011.

The landlord explained that the utility bills for the residential property came to him and the tenant was to reimburse him for the utilities, which included gas, water and electricity. The landlord submitted that the tenant did not pay utilities during the tenancy.

When questioned at the end of his testimony, the landlord stated that he could not explain what steps he took to re-rent the rental unit when he received the tenant's notice, only what he typically does in renting the rental unit.

When questioned, the landlord could not recall if he had ever submitted the tenant a copy or request for repayment of the utility bills.

The landlord agreed that in October 2011, he issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, although rent for October 2011 was paid by the tenant.

In response, the tenant stated that on October 13, she informed the landlord she would be ending the tenancy in November and pay rent for November. The tenant submitted that the landlord in response to that Notice issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on October 17, 2011, which was posted on the door. The tenant stated that as the landlord served her this eviction notice that she had to move from the rental unit within 10 days, she issued the October 21, 2011, notice that she was leaving at the end of the 10 day period.

The tenant stated that she filed for dispute resolution after receiving the 10 Day Notice as she did not want an eviction on her record. However the tenant stated she understood she was asked to leave by receiving the Notice.

The tenant concurred that she agreed to reimburse the landlord for utility bills for her usage, but that she has never received a copy of any utility bills.

The tenant argued that she should not be obligated to pay for the entire portion of the utility bills, as she rented the upper portion of the residential property and that the lower suite, although unoccupied during her tenancy, had the heating on throughout the tenancy. The tenant also argued that the landlord used his irrigation system, which she had not agreed to pay for, and that she used minimal water during the tenancy.

The tenant stated that therefore she should be responsible for no more than 70% of the bills.

The landlord, after the conclusion of the tenant's testimony, stated that the testimony reminded him that he did hire someone to re-rent the property.

When questioned, the landlord agreed that there had been no discussion with the tenant about the irrigation system, but that he "imagined" that it would be included.

The landlord submitted that although he issued the 10 Day Notice, he did not want the tenant to leave, only to ensure payment of rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under the Residential Tenancy Act, a landlord is responsible for providing a written tenancy agreement, clearly outlining the terms of the tenancy. In this case, the landlord failed to comply with the Act and did not provide a written tenancy agreement. The terms then become a matter of interpretation. In this case, I find that the parties had a month to month tenancy and not a fixed term.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

As to the landlord's claim for a loss of rent revenue for November 2011, I do not accept that the tenant provided insufficient notice to end the tenancy early.

Section 45 of the Act states that a landlord may elect to end a tenancy by issuing to a tenant a notice to end the tenancy within 10 days.

Although a copy of the 10 Day Notice to End Tenancy for Unpaid Rent was not submitted into evidence, the parties agree that one was issued by the landlord to the tenant, by posting on the door on October 17, 2011. Section 90 of the Act states the documents delivered via this method are deemed served 3 days later. Therefore the tenant was deemed to have been served the landlord's Notice to end the tenancy on October 20, 2011.

In this case, the parties agree that the tenant had paid rent in full for October by the due date and the landlord did not provide a clear explanation for his reason for issuing the Notice. Nonetheless, the landlord issued the Notice, which I find was his notice to the tenant that he was ending the tenancy, within 10 days of October 20, 2011.

As the landlord elected to end the tenancy, even though he had no valid reason in issuing the Notice, I accept that the tenant was entitled to leave rental unit by the effective day of the Notice by the actions of the landlord.

I therefore **dismiss** the landlord's claim for loss of rent revenue for November 2011, without leave to reapply.

Even had I not dismissed the landlord's claim for the above reason, I would still make the decision to dismiss the landlord monetary claim for \$1,600.00 as I find the landlord failed to submit proof that he advertised the rental unit or took any steps to re-rent the rental unit in order to mitigate his loss.

In the absence of that proof, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts.

As to the landlord's claim for unpaid utility, although there are no written terms in a tenancy agreement, the tenant stated that she agreed to pay for her utilities.

In this case, the tenant provided undisputed testimony that the heating and some lights in the lower unit remained on even though the lower rental unit sat empty. I therefore do not accept that the tenant was obligated to pay the entire bill for gas and electricity.

Additionally, the landlord admitted that he did not discuss with the tenant that an irrigation system would be used. I therefore do not accept that the tenant agreed to pay for the landlord's irrigation system.

While I find the landlord submitted insufficient evidence of the portion of the bills for which the tenant would be responsible, the tenant agreed that she should be responsible for no more than 70% of the bills. Due to the lack of evidence from the landlord, I accept the submission of the tenant.

I therefore find that the landlord is entitled to recovery of 70% of the utility bills, or the amount of \$225.55 ($\$322.21 \times 70\%$).

As to recovery of the filing fee, I decline to award the landlord recovery of his \$50.00 application fee. In reaching this decision, I concluded that the landlord's request for loss of rent revenue lacked merit. I also reviewed the landlord's evidence of the October 21, 2011, letter from the tenant to the landlord in notifying him that she was abiding by his request to end the tenancy.

That letter went on to ask the landlord to forward the utility bills for August 25 - October 31, 2011, to the tenant's forwarding address, which was given in the letter.

I therefore find that the landlord did not need to incur a filing fee in seeking to recover the utility bills.

Conclusion

The landlord's monetary claim for loss of rent revenue for November 2011, in the amount of \$1,600.00 and for recovery of the filing fee is dismissed, without leave to reapply.

The landlord's monetary claim for utility bills, in the amount of 70% of the total requested, or \$225.55, is granted.

I grant the landlord a monetary order in the amount of \$225.55, which is enclosed with his Decision.

This order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should it become necessary.

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 26, 2012.

Residential Tenancy Branch