



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Landlord also applied for an Order of Possession however in other proceedings between these parties held on March 21, 2012 the Landlord was granted an Order of Possession. Consequently, the Landlord's application for an Order of Possession in these proceedings is dismissed without leave to reapply.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") on March 14, 2012 by registered mail. Section 90(1) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on February 1, 2011 and ended on March 23, 2012 when the Tenant moved out. Rent was \$650.00 per month payable in advance on the 1st day of each month plus 1/3 of the utilities for the rental property. The Tenant paid a security deposit of \$200.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay utilities for February and March 2012 and did not pay rent for March 2012. The Landlord said he advertised the rental unit for availability in an online website as of March 24, 2012 but to date he has been unable to re-rent the rental unit. Consequently, the Landlord sought a loss of rental income for April 2012.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that utilities for February 2012 and March 2012 are unpaid. The Landlord provided a utility invoice for water and electricity for the period January 18 – February 14, 2012 (for 27 days) in the total amount of \$256.02. Given that the tenancy did not start until February 1, 2012, I find that the Tenant is only responsible for 14 of the 27 days billed. Consequently, I find that the Landlord is entitled to recover unpaid utilities for February 1 – 14, 2012 in the amount of **\$44.25** (ie. $\$256.02 \times 14/27 = \$132.75 \times 30\% = \$44.25$). As the Landlord has not yet been billed for the balance of February and all of March 2012 that part of his application is dismissed with leave to reapply.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover unpaid rent for March 2012 in the amount of **\$650.00**. 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 in writing that they are ending the tenancy. Consequently, the earliest the Tenant could have ended the tenancy had he given notice on March 21, 2012 (the date of the Order of Possession) would have been April 30, 2012. As a result, I find that the Tenant may be liable for a loss of rental income for all of April.

However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlord said he has been advertising the rental unit but has been unable to re-rent it to date. In the circumstances, I find that the Landlord is entitled to a loss of rental income to April 15, 2012 in the amount of **\$325.00**. The Landlord may re-apply for a loss of rental income for the balance of April 2012 if he is unable to re-rent the rental unit for that period.

As the Landlord has been successful in this matter, I find that he is entitled pursuant to s. 72 of the Act to recover from the Tenant the **\$50.00** filing fee for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$200.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$869.25.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$869.25** 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: April 03, 2012.

Residential Tenancy Branch