



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit is vacant.

The Application for Dispute Resolution has been amended, as the request of the Tenant, to accurately reflect the Landlord's name.

At the hearing the Landlord was advised that his claim to recover a debt allegedly owing because the Landlord sold weights to the Tenant will not be considered, as claims of this nature are not within my jurisdiction.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, although none was submitted, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, utilities, and loss of revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 15, 2011; that the Tenant was required to pay monthly rent of \$1,400.00 by the first day of each month; that the Tenant paid a security deposit of \$700.00, and that the Tenant did not pay rent for April of 2012.

The Landlord stated that he served the Tenant with a Ten Day Notice to End tenancy on April 03, 2012, that the effective date of the Notice was April 14, 2012, and that the Tenant vacated the rental unit on April 14, 2012 or April 15, 2012. The female Tenant stated that the Landlord served the Tenant with a Ten Day Notice to End tenancy on April 02, 2012, that the effective date of the Notice was April 14, 2012, and that the Tenant vacated the rental unit on April 11, 2012.

The Landlord stated that the tenancy agreement the parties signed indicated that the agreement was for a fixed term of two years. The female tenant stated that tenancy agreement was a month to month agreement.

The Landlord is seeking compensation for loss of revenue for May and June of 2012, due to his belief that the Tenant ended the fixed term tenancy prematurely. He stated that his ex-wife advertised the rental unit on popular websites and that he is not certain when she placed the first ad, however he believes it was "around" May 15, 2012. He stated that the rental unit is still vacant.

The Landlord stated that the tenancy agreement the parties signed indicated that water was not included in the monthly rent. The female tenant stated that tenancy agreement did not specify whether water was included in the rent and the parties did not discuss whether or not the Tenant would have to pay for water.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,400.00 by the first day of each month and that they did not pay the rent that was due on April 01, 2012. As they were required to pay rent when it was due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,400.00 in outstanding rent to the Landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord bears the burden of proving that this tenancy was for a fixed term. I find that the Landlord has submitted insufficient evidence to show that the tenancy was for a fixed term of any period. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a written tenancy agreement, that corroborates his claim it was for a fixed term or that refutes the female Tenant's testimony that it was a periodic tenancy. As the Landlord has not established that the

tenancy was for a fixed term, I dismiss the Landlord's claim for loss of revenue arising from a premature end to a fixed tenancy.

While in some circumstances a landlord may be entitled to compensation for loss of revenue if the rental unit remains vacant after the tenancy is ended due to non-payment of rent, I find that compensation is not warranted in these circumstances. In reaching this conclusion I was heavily influenced by the Landlord's inability to state, with any degree of certainty, when the rental unit was advertised after the Notice to End Tenancy had been served.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. In these circumstances I find it reasonable for the Landlord to have advertised the rental unit five days after the Tenant was served with the Notice to End Tenancy, as that would have significantly improved the Landlord's ability to find a new tenant. To delay advertising the rental unit until the middle of April, in my view, significantly reduces the likelihood of finding a new tenant for May 01, 2012. As the Landlord did not take appropriate steps to minimize the loss of revenue experienced, I dismiss the landlord's claim for compensation for loss of revenue.

I find that the Landlord has submitted insufficient evidence to show that the Tenants were required to pay for water used during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a written tenancy agreement, that corroborates his claim that the tenancy required the Tenants to pay for water or that refutes the female Tenant's testimony that there was no agreement regarding paying the water bill. As the Landlord has not established that the Tenant was obligated to pay for water, I dismiss the Landlord's claim for compensation for a water bill.

I find that the Landlord's application has some merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,450.00, which is comprised of \$1,400.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit, in the amount of \$700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$750.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: May 09, 2012.

Residential Tenancy Branch