



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an application for dispute resolution under the Residential Tenancy Act (the “Act”) by the landlord for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and 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 an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent?

Background and Evidence

This tenancy began in 2004, monthly rent started at \$1250.00, current monthly rent is \$1325.00, and a security deposit of \$625.00 was paid by the tenant at the beginning of the tenancy. The parties agreed that the tenancy ended on June 30, 2012, when the tenant vacated the rental unit.

The landlord said that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), by personal delivery on June 18, 2012 by the landlord’s daughter, listing unpaid rent of \$1325.00 as of June 1, 2012. The effective vacancy date listed on the Notice was left blank.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord's monetary claim is \$2650.00, for unpaid rent for June for \$1325.00 and loss of revenue for the month of July, for \$1325.00.

The landlord said that the tenant failed to pay rent in June and that he lost revenue for July as he was unable to re-rent the rental unit for that month.

The landlord said several times that he did not receive the tenant's notice that she was vacating the rental unit, and then, when questioned about the tenant's written notice of her intention to vacate on June 30, 2012 he supplied into evidence, the landlord said he did receive notice. However, according to the landlord, the tenant's notice he received on June 19, 2012, according to his notation on the notice, did not allow for time to find a new tenant for July 2012.

In response, the tenant said that the Notice was not delivered to her, but rather she issued her notice to end tenancy to the landlord due to the landlord's failure to make repairs to the rental unit.

The tenant agreed that she did not pay rent for June 2012, due to the lack of repairs.

Analysis

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

As the tenancy has ended, I dismiss the landlord's request for an order of possession.

As to the landlord's request for \$2650.00, 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, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, 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 whether the tenant received the 10 Day Notice to End Tenancy for Unpaid Rent, I find the landlord failed to prove that the tenant was served the Notice as the person serving the Notice failed to attend the hearing and provide testimony.

However, I find the tenant owed rent on June 1, 2012, and failed to pay this amount, as the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find the landlord has proven a monetary claim for unpaid rent of \$1325.00 for June 2012.

As to lost revenue for the month of July 2012, I find the landlord failed to submit proof that upon receiving the tenant's notice of vacating, he immediately advertised the rental unit or that he took other steps to mitigate his loss by otherwise marketing the rental unit.

In the absence of proof by the landlord of advertisements or other marketing tools, 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 to minimize his loss.

I therefore dismiss the landlord's monetary claim for loss of revenue for July 2012, without leave to reapply.

Conclusion

The landlord has established a total monetary claim of \$1325.00 for unpaid rent for June 2012.

I therefore grant the landlord a monetary order pursuant to section 67 of the Act for \$1325.00 and enclose the monetary order with the landlord's Decision. This order is a final, legally binding order, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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: July 18, 2012.

Residential Tenancy Branch