



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution.

On July 10, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order in the amount of \$4,485.45, for unpaid rent and utilities; for money owed or compensation for damage or loss; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

On July 27, 2011 the Landlord amended the Application for Dispute Resolution by increasing the amount of the claim to \$5,176.26 and adding an application for a monetary Order for damage and to retain all or part of the security deposit.

The Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The female Landlord stated that a copy of the original Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant at his place of employment on July 11, 2012 and a copy the amended Application for Dispute Resolution was sent to the male Tenant at his place of employment on July 25, 2012.

The female Tenant acknowledged receipt of the original and amended Application for Dispute Resolution. She stated that the male Tenant received the amended Application for Dispute Resolution and that she was representing him at this hearing.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence, with the exception of the tenancy agreement. The Landlord's evidence, with the exception of the tenancy agreement, was accepted as evidence for these proceedings.

The Tenant submitted no evidence.

At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Landlord was advised that the application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item.

While I accept that the Landlord provided receipts for cleaning the carpet and purchases, I find that these receipts do not clarify the nature of all the alleged damages. I find that the receipts are not sufficient notice of the nature of the Landlord's claims and I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for damages to the rental unit.

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 May 01, 2009; that the Tenant was required to pay monthly rent of \$2,200.00 by the first day of each month; and that the Tenant paid a security deposit of \$1,100.00.

The Landlord and the Tenant agree that the Tenant did not pay any rent for July of 2012.

The Landlord and the Tenant agree that the female Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 14, 2012, on July 04, 2012.

The Tenant stated that they vacated the rental unit on July 14, 2012. The female Landlord stated that they picked up the keys to the unit from the Tenant's place of employment on July 16, 2012; that they did not visit the rental unit between July 14, 2012 and July 16, 2012; and they have no knowledge of whether or not the Tenant continued to occupy the unit after July 14, 2012.

The Landlord is seeking compensation for loss of revenue for August of 2012, as they have been unable to find new tenants for the unit. The female Landlord stated that her son advertised the rental unit on the internet on July 16, 2012, although she was unable to identify the name of the internet site. She stated that ads were placed in two local newspapers on July 16, 2012.

The Tenant stated that she did not see any advertisements for the rental unit on the internet or in local papers.

The Landlord is seeking compensation, in the amount of \$81.38, for an unpaid water bill. The Tenant agrees that this amount is owed to the Landlord.

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 \$2,200.00 by the first day of each month.

Based on the undisputed evidence presented at the hearing, I find that the Tenant did not pay rent for July of 2012. As the Tenant was is required to pay rent on July 01, 2012, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,200.00 in outstanding rent to the Landlord.

Based on the undisputed evidence presented at the hearing I find that a Ten Day Notice to End Tenancy, which had a declared effective date of July 14, 2012, was personally served to the female Tenant on July 04, 2012. Based on the testimony of the female Tenant and in the absence of evidence to the contrary, I find that this rental unit was vacated on July 14, 2012.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the loss of revenue experienced in August of 2012.

In my view, the Landlord had an obligation to begin advertising the rental unit as soon as the Tenant was legally obligated to vacate the rental unit on the effective date of the Notice. In these circumstances the Notice to End Tenancy was received on July 04, 2012. As the Tenant had not paid the overdue rent or filed an Application for Dispute Resolution by July 09, 2012, they were obligated to vacate the rental unit by July 14, 2012. I therefore find that the Landlord should have advertised the rental unit on July 10, 2012. I find that the Landlord did not take reasonable steps to minimize the loss of revenue when the Landlord failed to advertise the rental unit in a timely manner. I therefore dismiss the Landlord's claim for compensation for lost revenue from August of 2012.

As the Tenant agrees that \$81.38 is owed to the Landlord for water charges, I find that the Tenant must pay the Landlord this amount.

I find that the Landlord's application has 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 \$2,381.38, which is comprised of \$2,200.00 in unpaid rent, \$81.38 for utility charges, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,281.38. 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: August 01, 2012.

Residential Tenancy Branch