



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 hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenant's security deposit and to recover the filing fee.

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

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted 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.

Preliminary Issue-The parties agreed that the tenants vacated the rental unit on or about July 30, 2012; therefore I amended the landlord's application excluding her request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

I heard testimony from the landlord that this tenancy began on January 1, 2009, monthly rent was \$700.00, and a security deposit of \$350.00 was paid by the tenants at the beginning of the tenancy on or about January 1, 2009.

The tenant stated that she believed the tenancy began on January 1, 2008.

The parties agreed that there was not a written tenancy agreement.

The landlord said that on July 20, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery, listing unpaid rent of \$600.00 as of July 1, 2012. The effective vacancy date listed on the Notice was July 30, 2012.

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.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord stated that the tenant did not make any further payment of rent and owed \$1300.00 in total unpaid rent, including for August 2012.

In response, the tenant said that she attempted to pay rent of \$250.00 in July, with the landlord using the security deposit as the balance of the monthly rent. The reason for this pertained to other issues not directly related to this application. The landlord refused.

The tenant contended that she did not owe rent for August due to having given the landlord notice on July 8-10, 2012, via voicemail, of her intent to vacate by July 31, 2012.

The tenant said she was not able to deliver the landlord written notice as the landlord has never given the tenant a mailing or physical address for service of documents.

When questioned, the landlord could not recall giving the tenant a mailing or physical address, although she thought that she did.

The landlord also responded saying that she was not given a month's notice and was therefore entitled to rent for the following month, August.

When questioned, the landlord said she attempted to re-rent the rental unit by placing an advertisement in the local newspaper and received a quick response. The rental unit, according to the landlord, was not rented until September as she needed to clean it.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

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

I find the tenant was legally obligated under the Act and tenancy agreement to pay rent on July 1, 2012, and did not pay. I therefore find the landlord has established a monetary claim of \$600.00 for unpaid rent for June 2012.

As to the loss of revenue for August, I find the landlord received the tenant's notice of their intent to vacate on July 8-10, and submitted insufficient evidence of her taking reasonable steps to minimize her loss for August. Such steps would include advertising the rental unit or using marketing tools to re-rent, the proof of which the landlord failed to submit.

If the landlord had received the quick response from the successive tenant as claimed, there was no reason shown why the rental unit was not able to be re-rented for August 2012. Due to the landlord's insufficient evidence, I dismiss her monetary claim of \$700.00 for loss of revenue for August 2012.

Conclusion

I find that the landlord has established a total monetary claim of \$650.00 comprised of unpaid rent of \$600.00 for July 2012, and the \$50.00 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$350.00 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$300.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

The tenant raised other issues regarding her tenancy; however I advised the tenant I would not be able to consider those issues as they were not relevant to her obligations relating to the landlord's application. The tenant may seek remedy through her own application for dispute resolution.

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 29, 2012.

Residential Tenancy Branch