



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that she mailed the Notice of Hearing documents, by registered mail, to the rental unit on May 31, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence, along with a Canada Post printout of the tracking search. The tracking information indicates that the Tenant KP received and signed for the documents on July 30, 2012.

An Applicant must serve all Respondents with the Notice of Hearing documents. I am satisfied that the Landlord served the Tenant KP with the documents, as provided in the tracking search. However, I find that the Landlord has provided insufficient evidence that the Tenant JP was served with the documents. Therefore, the Landlord's application against the Tenant JP is dismissed. Tenants are jointly and severally responsible for debts and damages incurred over a tenancy. The Hearing continued against the Tenant KP only.

Preliminary Matters

At the outset of the Hearing, it was determined that the Tenants have moved out of the rental unit. The Landlord's agent testified that the Tenants moved out on August 1, 2012. The Tenant testified that the Tenants moved out on July 31, 2012.

The Landlord has taken back possession of the rental unit and therefore his application for an Order of Possession is dismissed as it is no longer required.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for the months of June, July and August, 2012?

Background and Evidence

The Landlord provided documentary evidence with respect to damages to the rental

unit. The Landlord has not filed an Application for Dispute Resolution for damages and therefore that evidence is not described in this Decision. The Landlord is at liberty to file an Application for damages, should he so desire.

The parties agreed on the following facts:

- This tenancy started on December 15, 2011.
- Monthly rent was \$700.00 due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$350.00 at the beginning of the tenancy.

The Landlord's agent testified that she issued a Notice to End Tenancy for Unpaid Rent on July 12 or 13, 2012. She was not certain of the exact date. The Tenant stated that she did not receive a notice to end the tenancy from the Landlord. The Landlord did not provide a copy of the Notice to End Tenancy or proof of service of the Notice to End Tenancy.

The Landlord's agent testified that the Tenant still owes \$400.00 for June rent and \$700.00 for July rent. The Landlord's agent testified that the Landlord also seeks \$700.00 for August because the Tenants did not move out in time for him to re-rent the rental unit for August, 2012.

The Tenant testified that the Tenants paid full rent for June, and \$300.00 for July, 2012. The Tenant stated that the Landlord still has post dated cheques. The Landlord's agent stated that the post dated cheques have not been cashed and that the Landlord cannot return them because the Tenants refuse to provide a forwarding address.

Neither party provided documentary evidence to support their submissions with respect to whether or not rent was paid for June or July, 2012, or how much rent was paid in June or July, 2012.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has provided insufficient evidence to prove his claim for unpaid rent in the amount of \$400.00 for the month of June, 2012. The Tenant acknowledged that she only paid \$300.00 for the month of July, 2012, and therefore I find that the Landlord has established a claim for unpaid rent in the amount of **\$400.00** for the month of July, 2012.

Based on the testimony of both parties, I find that the Landlord has not provided sufficient evidence that the Tenants received a Notice to End Tenancy for Unpaid Rent.

Section 45 of the Act provides that a tenant must give a landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; and is the day before the day in the month that rent is payable under the tenancy agreement. I find that the Tenants did not provide the Landlord with due notice to end the tenancy pursuant to the provisions of Section 45 of the Act and therefore, I find that the Landlord is entitled to compensation in the amount of **\$700.00** for the month of August, 2012.

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the filing fee from the Tenant, in the amount of **\$50.00**.

It is my practice to order a landlord to return any postdated cheques that the landlord holds to a tenant at the end of the tenancy. However, in this case the Tenant did not wish to provide her new address and therefore, I make no order with respect to the postdated cheques

The Landlord is still holding the \$350.00 security deposit. I explained to the Landlord's agent that, pursuant to the provisions of Section 72 of the Act, the Landlord could apply the security deposit towards his monetary award and I would provide a Monetary Order for the balance of \$800.00. I also explained to the Landlord's agent that the Landlord would have to serve the Monetary Order upon the Tenant KP. The Landlord's agent stated that she did not wish to set the security deposit against the Landlord's monetary award.

Therefore, I hereby provide the Landlord a Monetary Order in the total amount of \$1,150.00, calculated as follows:

Unpaid rent for July, 2012	\$400.00
Loss of revenue for August, 2012	\$700.00
Recovery of filing fee	<u>\$50.00</u>
Total	\$1,150.00

The security deposit in the amount of **\$350.00** must be applied in accordance with the provisions of the Act.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,150.00** for service upon the Tenant KP. This Order, once served, may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The security deposit in the amount of **\$350.00** must be applied in accordance with the provisions of the Act.

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 20, 2012.

Residential Tenancy Branch