



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC, MNSD, FF
Tenant: CNR, MT, MNDC, RP, RR, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlord said the Tenant vacated the rental property on or about August 27, 2012 and as a result, she withdrew her application for an Order of Possession

The Tenant applied for more time to cancel a Notice to End Tenancy and to cancel two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated July 18, 2012 and August 3, 2012 respectively, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord make repairs, for a rent reduction and to recover the filing fee for this proceeding. The oral hearing via conference call started at 1:30 p.m. as scheduled, however by 1:40, the Tenant had not dialled in to the conference call. In the absence of any evidence from the Tenant to support his application, it is dismissed in its entirety without leave to reapply.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 21, 2012. According to the Canada Post online tracking system, the Tenant received the hearing package on August 23, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on November 28, 2011 and was to expire on November 30, 2012 however it ended on or about August 27, 2012 when the Tenant moved out.

Rent was \$1,250.00 per month payable in advance on the 1st day of each month plus 65% of the hydro and gas expenses for the rental property. The Tenant paid a security deposit of \$625.00 at the beginning of the tenancy.

The Landlord said the Tenant had rent arrears of \$50.00 for June 2012 and did not pay rent for July and August 2012. The Landlord said during the tenancy the Tenant only paid \$688.00 toward his share of the utilities and that he currently has utility (ie. gas and hydro) arrears of \$1,723.76. The Landlord also sought to recover lost rental income for the month of September 2012 as well as 5 late rent payment fees of \$75.00 each pursuant to a term in the Parties' tenancy agreement to that effect.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover rent arrears in the total amount of **\$2,550.00** for June, July and August 2012. Although the Tenant is technically liable for paying rent to the end of the fixed term (or November 30, 2012), a Landlord must not only provide evidence that they have lost rental income but that they have attempted to mitigate their losses by re-renting the rental unit as soon as possible. I find that it is reasonably unlikely that the Landlord will be able to re-rent the rental unit for the first half of the month of September 2012 and therefore I grant the Landlord compensation for lost rental income in the amount of **\$625.00** for the period, September 1 – 15, 2012. The Landlord may re-apply for any further loss of rental income she incurs.

The Landlord sought \$1,723.76 in unpaid utilities however upon review of the billing invoices provided by the Landlord, I find that this amount is not correct and that based on the following calculations, I find that the arrears instead total **\$1,009.75**:

<u>Billing Period:</u>	<u>Fortis (Gas)</u>	<u>Adjusted Amount</u>
Nov. 7 – Dec. 7/11	\$236.81	\$78.90 (for 10 days)
Dec. 7 – Jan 6/12	\$163.40	
Jan. 6 – Feb. 6/12	\$380.99	
Feb. 6 – Mar. 6/12	\$155.56	
Mar. 6 – Apr. 4/12	\$252.38	
Apr. 4 – May 4/12	\$95.47	
May 4 – Jun. 5/12	\$141.89	
June 5 – Jul. 5/12	\$54.79	
Jul. 5 – Aug. 3/12	\$151.05	
Total:		\$1,474.43
Tenant's share at 65%:		\$958.38

<u>Billing Period:</u>	<u>BC Hydro</u>	<u>Adjusted Amount</u>
Oct. 7 – Dec. 7/11	\$58.52	\$9.40 (for 10 days)
Dec. 8 – Jan. 9/12	\$30.64	
Dec. 8 – Feb 6/12		\$32.00
Feb. 7 – Mar. 31/12	\$293.79	
Apr. 5 – Jun. 5/12	\$368.53	
Jun. 6 – Aug. 3/12	\$403.13	
Total:		\$1,137.49
<i>Tenant's share at 65%:</i>		<i>\$739.37</i>

- \$958.38 + \$739.37 = \$1,697.75
- Less payments made: (\$688.00)
- Balance owing: \$1,009.75

Section 7 of the Regulations to the Act says that a Landlord may charge a fee of no more than \$25.00 as a late fee. Section 5 of the Act says that a term of a tenancy agreement that is contrary to the Act or Regulations is of no force and effect. Furthermore, it is not within the power of the director to amend a term of a tenancy agreement so that it complies with the Act and for these reasons, the Landlord's claim for late payment fees is dismissed without leave to reapply.

The Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee she paid for this proceeding. Consequently, I find that the Landlord is entitled to a monetary award of \$4,234.75. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$625.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$3,609.75.

Conclusion

The Tenant's application is dismissed without leave to reapply. The Landlord's application for an Order of Possession is withdrawn. A Monetary Order in the amount of \$3,609.75 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 05, 2012.

Residential Tenancy Branch