



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC; O; FF

Introduction

This is the Landlord's application for a Monetary Order for loss of revenue; and to recover the cost of serving the Tenant and the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenant, express post, to his forwarding address on August 14, 2012. The Landlord provided the tracking numbers for the registered documents. The Landlord testified that the documents were returned to him "unclaimed" on September 7, 2012.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents whether or not the recipient chooses to accept delivery.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Preliminary Matters

The Landlord had requested an Order of Possession on his Application for Dispute Resolution filed August 9, 2012. The Landlord stated that this was an error and that he was withdrawing that part of his Application.

The Landlord provided a copy of a Decision from a Dispute Resolution Hearing on May 24, 2011, which was convened to consider the Landlord's application for an Order of Possession and Monetary Orders for unpaid rent and loss of revenue. At the outset of the Hearing, I expressed a concern that the relief sought in the Landlord's current

Application for Dispute Resolution may have been already decided at the May 24th Hearing and therefore there would be an absolute bar to a subsequent Application involving the same claim.

The Landlord stated that the Dispute Resolution Officer in the previous Hearing had advised him that he had a duty to mitigate his loss and that since he was being provided the Order of Possession on May 24, 2011, he still had time to advertise the rental unit and possibly re-rent it unit before July 1, 2011. The Landlord stated that this portion of his Application was considered pre-mature by the Dispute Resolution Officer and that he understood that he would be at liberty to re-apply if he was unable to re-rent the rental unit, after reasonable attempts, before July 1, 2011.

I have carefully read the May 24, 2011, Decision, and I accept the Landlord's submission that the Dispute Resolution Officer considered the Landlord's application for loss of revenue to be premature. The Landlord had requested an Order of Possession to be effective June 10, 2011, in order to provide the Tenant with some time to organize his move. The Dispute Resolution Officer provided the Landlord with compensation for loss of revenue to June 10, 2011. In this Application for Dispute Resolution, the Landlord seeks loss of revenue from June 11 to June 30, 2011. Therefore, I find that this matter has not already been decided and that we can proceed with the Landlord's claim.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for loss of revenue from June 11 to 30, 2011, and the cost of serving the Tenant?

Background and Evidence

The Landlord gave the following testimony and evidence:

Monthly rent was \$1,500.00. This tenancy ended as a result of a 10 Day Notice to End Tenancy for unpaid rent. On May 24, 2011, the Landlord was provided an Order of Possession effective June 10, 2011.

On May 25, 2011, the Landlord advertised the rental unit in a well known on-line site. The rental unit was listed as available June 11, 2011. The Landlord received a reply from a prospective tenant on June 2, 2011, and showed the rental unit on June 4, 2011. The Landlord stated that he attempted to re-rent the rental unit for June 11, 2011, but that being mid-month, it was difficult. The new tenant moved into the rental unit on July 1, 2011.

Analysis

Based on the undisputed affirmed testimony of the Landlord, I am satisfied that the Landlord advertised the rental unit on May 25, 2011, and that he did whatever was reasonable to minimize his loss of revenue by attempting to re-rent the rental unit for June 11, 2011.

Therefore, I find that the Landlord has established a monetary claim for loss of rent in the amount of **\$1,000.00**.

There is no provision in the Act for recovery of the cost of serving party. Therefore, this portion of the Landlord's application is dismissed.

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

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,050.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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 12, 2012.

Residential Tenancy Branch