



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

The landlord applied requesting an Order of possession, compensation for unpaid rent, compensation for damage or loss under the Act, to retain the deposit and to recover the filing fee cost.

The landlord provided affirmed testimony that on September 20, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. The landlord checked the Canada Post tracking site and determined that on the tenant signed, accepting the mail at the forwarding address he had given to the landlord.

These documents are deemed to have been served in accordance with section 89 of the Act, however the landlord did not appear at the hearing.

The landlord confirmed receipt of the tenant's Notice of Hearing package.

As the tenant did not attend the hearing I dismissed his application.

Preliminary Matters

The landlord withdrew his request for an Order of possession as the tenant vacated the unit on September 30, 2012.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of 1,575.00 for unpaid September, 2012 rent?

Is the landlord entitled to loss of rent revenue for October and November, 2012?

Is the landlord entitled to compensation for unpaid utilities?

May the landlord retain the deposits?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord supplied a copy of the 1 year fixed-term tenancy agreement signed by the parties on May 1, 2011. Rent was \$1,575.00 per month, due on the 1st day of each month. Water, electricity and heat were not included; the landlord stated the tenant was to pay 60% of those costs, rather than the total amount. A security and pet deposit was paid in the sum of \$787.50 each.

At the end of the fixed-term the tenancy converted to a month-to-month term. The tenant gave proper written Notice ending his tenancy effective September 30, 2012. At that time he provided his written forwarding address.

The landlord has made the following claim:

September rent	1,575.00
Loss of November rent	1,575.00
Hydro May 23 – July 20, 2012	219.25
Water bill February 1 – May 31, 2012	159.00
Hydro bill July 21 – September 30 est.	129.00
Water bill June 1 – September 30 est.	120.00
TOTAL	5,352.25

The tenant did not pay September rent owed. The landlord issued two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities; on September 2, for the rent and another on September 7, for unpaid utilities of \$378.25. The tenant disputed the Notices, which barred the landlord from locating new occupants for October 1, 2012, as the landlord was unsure if the tenant would vacate the unit as his written notice has indicated he would.

The tenant did not withdraw his application to dispute the Notices or cancel his hearing; he did vacate the unit on September 30, 2012.

The tenant did not pay September rent owed. The landlord supplied a copy of a September 1, 2012 email sent by the tenant indicating he could not borrow the money for September rent and that he would pay the rent and utilities within 3 months. The email acknowledged the debt the tenant owed to the landlord.

The landlord is now seeking another occupant for the unit. Since September 30, 2012 the unit has been advertised at \$1,800.00 per month which includes utilities.

The landlord had claimed a loss of future rent revenue for November.

The landlord supplied copies of utility bill for hydro and water up to July 20 and June 1, 2012, respectively. Since submitting the application the landlord established that hydro and water bills owed to the end of the tenancy were \$248.04 and \$304.00 respectively. The amount claimed on the application did not fully estimate the cost for hydro and water.

The landlord submitted evidence showing the tenant had been served with the utility bills, sent via email on August 9, 2012. The parties had a history of communicating via email.

Analysis

I find, in the absence of the tenant who was served with Notice of this hearing, that the landlord is entitled to compensation for unpaid September, 2012 rent in the sum of \$1,575.00.

I find that the tenant's application to dispute the Notice resulted in an inability of the landlord to be assured of vacant possession of the rental unit on September 30, 2012. The hearings were scheduled to occur after September 30 and the tenant gave no assurance that he would not continue to dispute the Notices.

Therefore, I find that the landlord is entitled to compensation in the sum of \$787.50 for loss of October, 2012 rent revenue. Section 7 of the Act requires a landlord to mitigate a loss claimed and I find that the landlord did obtain possession of the unit on September 30, 2012 and has the opportunity to re-rent the unit effective October 15, 2012. The balance of the claim for loss of October rent is dismissed, as is the claim for loss of November rent revenue.

In relation to the claim for water and hydro costs, I find that the landlord is entitled to payment of the amounts claimed and indicated on the application. The amounts reconcile with the copies of bills supplied as evidence. There was evidence before me that the tenant had been paying a portion of the utility costs and did so up until May, 2012.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Loss of October rent	1,575.00	787.50

Loss of November rent	1,575.00	0
Hydro May 23 – July 20, 2012	219.25	219.25
Water bill February 1 – May 31, 2012	159.00	159.00
Hydro bill July 21 – September 30 est.	120.00	120.00
Water bill June 1 – September 30 est.	120.00	120.00
TOTAL	5,352.25	2,980.75

The landlord will retain the tenant's security and pet deposit in the sum of \$1,575.00 in partial satisfaction of the claim.

As the landlord's application has merit I find that the landlord is entitled to recover the filing fee from the tenant.

Conclusion

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,455.75 for unpaid rent, loss of rent revenue, unpaid utilities and the filing fee costs.

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.

The balance of the landlord's claim is dismissed.

The tenant's Application for dispute resolution is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 05, 2012.

Residential Tenancy Branch