



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") first by registered mail on September 21, 2012 and then by personal delivery mail on October 9, 2012. The Tenant said she received the hearing package. 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 with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

The tenancy agreement says that this tenancy was to start on July 15, 2012, but the Tenant did not move into the rental unit. The tenancy was to be a month to month tenancy. Rent was to be \$850.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit, but a security deposit of \$425.00 was required by the tenancy agreement.

The Landlord said the Tenant and her signed a tenancy agreement on June 27, 2012 for a tenancy that was to start on July 15, 2012. The Tenant paid the rent from July 15, 2012 to July 31, 2012 in the amount of \$425.00. The Landlord said this rent was first paid by cheque which was returned NSF and cost the Landlord \$7.00 in bank charges and then the rent was paid by cash in the amount of \$425.00. The Landlord continued to say that on July 13, 2012 the Tenant verbally told the Landlord she was not moving into the rental and then on July 17, 2012 the Tenant gave the Landlord written notice that she was not moving into the unit. The Landlord said that because the Tenant did not move in, the Landlord was unable to rent the unit for the time period of August 1, 2012 to August 15, 2012 and therefore the Landlord said she has lost \$425.00 in rental

income. The Landlord said the rental unit was rented to new tenants as of August 15, 2012.

As a result the Landlord has made this application for compensation for unpaid rent of \$425.00, to recover the bank charges of \$7.00 and for the filing fee for this proceeding of \$50.00. The Landlord said her total claim is \$482.00.

The Tenant said she did not move into the rental unit as she did not realize she was to be responsible for collecting the utilities from the basement tenant and that she had made an arrangement with her previous Landlord to stay in that rental unit. The Tenant said she believes that the rent she paid from July 15, 2012 to July 31, 2012 should cover any charges that the Landlord feels the Tenant owes to the Landlord. The Tenant said she is not sure if the Landlord really tried to rent the unit out as quickly as possible and therefore the Tenant does not believe she is responsible for the rent for August 1 to August 15, 2012. The Landlord said she advertised the rental unit on July 13, 2012 as soon as she knew the Tenant was not going to move in. The Landlord said she rent the unit to new tenants as soon as she could do so.

Analysis

Section 16 of the Act says once a tenancy agreement is entered into the parties are obligated to the contract whether the tenant moves in or not.

Section 45 says a tenant may end a period tenancy not earlier than 1 month after the Landlord receives notice and the notice will be based on the day in the month the rent is due.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this situation the tenancy agreement was entered into June 27, 2012 and tenancy started July 15, 2012. The Tenant then gave notice to the Landlord that she was not moving into the unit or that she was giving the Landlord notice that she was ending the tenancy, verbally on July 13, 2012 and then in writing on July 17, 2012. As a result the Notice is for an effective move out date of 30 days from the rent payment date of August 1, 2012 or an effective vacancy date of August 31, 2012. Consequently the Tenant is responsible for the August, 2012 rent, but as the Landlord rented the unit out on August 15, 2012 the Tenant is only responsible for the Landlord's loss of rental income from August 1 to August 15, 2012 in the amount of \$425.00.

The Tenant did not have the right under the Act to withhold part or all of the rent for August, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$425.00 for August 1, 2012 to August 15, 2012 in the amount of \$425.00.

As well I award the Landlord the bank charges of \$7.00 which resulted from the Tenant's cheque being returned NSF.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 425.00
Bank charges	\$ 7.00
Recover filing fee	\$ 50.00
Subtotal:	\$ 482.00
Balance Owing	\$ 482.00

Conclusion

A Monetary Order in the amount of \$482.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch