



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, a monetary Order for unpaid rent and utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The female Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on October 31, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. The male Landlord stated that these documents were mailed to the rental unit after the Tenant had vacated the rental unit. As these documents were not served to the Tenant in accordance with section 88 of the *Act*, they were not accepted as evidence for these proceedings.

The Landlord was not permitted to amend the Application for Dispute Resolution to include a claim for damages to the rental unit, as the Landlord has not served the Tenant with notice of the Landlord's intent to claim compensation for damages.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/loss of revenue and/or unpaid utilities; to keep all or part of the security deposit; and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The male Landlord stated that this tenancy began on March 02, 2012; that the Tenant was required to pay monthly rent of \$1,200.00 on the first day of each month; that the Tenant was only required to pay monthly rent of \$900.00 for March of 2010; and that the Tenant paid a security deposit of \$600.00.

The male Landlord stated that the Tenant only paid \$600.00 in rent for March of 2010 and that no rent was paid for October of 2012. The Landlord stated that no rent was paid for November of 2012 and the Landlord is seeking compensation for lost revenue from this month.

The male Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities was sent to the Tenant, via registered mail, on October 23, 2012. The male Landlord stated that the Notice to End Tenancy was submitted to the Residential Tenancy Branch, via fax, on an unknown date but that it was not served to the Tenant after October 23, 2012. As it was not served to the Tenant as evidence for these proceedings, I would not have accepted the Notice to End Tenancy as evidence even if I had it before me at this hearing, which I did not.

The male Landlord stated that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by November 03, 2012 and that he did not vacate the unit until November 05, 2012. The male Landlord stated that he began advertising the rental unit on November 15, 2012.

The male Landlord stated that the rental agreement required the Tenant to pay hydro costs for the rental unit. The Landlord is claiming compensation for hydro costs of \$200.00, although no documentary evidence was submitted to corroborate the claim that this expense was incurred.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$900.00 in March of 2010 and \$1,200.00 on the first day of each subsequent month.

On the basis of the undisputed evidence, I find that the Tenant still owes \$300.00 in rent from March of 2010 and \$1,200.00 in rent from October of 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,500.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, which directed the Tenant to vacate the rental unit by November 03, 2012, pursuant to section 46 of the *Act*, was mailed to the Tenant on October 23, 2012.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received the Notice to End Tenancy on October 28, 2012.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 28, 2012, I find that the earliest effective date of the Notice was November 07, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 07, 2012.

As the Tenant did vacate the rental unit prior to the effective date of the Notice, I find that he is only obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for the five days in November that he remained in possession of the rental unit, at a daily rate of \$40.00, which equates to \$200.00.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Landlord had grounds to end the tenancy as a result of the Tenant's failure to pay rent and that the Tenant's actions contributed to a loss of revenue in the month of November.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the Act, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the loss of revenue experienced in November. In my view, the Landlord had an obligation to advertise the rental unit as soon as the Landlord had reason to believe that the unit would be vacant in November, which in these circumstances would be November 02, 2012, which is five days after the Tenant was deemed to have received the Ten Day Notice to End Tenancy. As the Landlord did not advertise the rental unit until November 17, 2012, I find that the Landlord did not take reasonable steps to mitigate the loss of revenue. I therefore dismiss the Landlord's claim for lost revenue from November of 2012.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay hydro charges incurred at the rental unit. I find that the Landlord has submitted insufficient evidence to establish that hydro costs of \$200.00 were incurred. In reaching this conclusion I was heavily influenced by the absence of evidence, such as hydro bill(s), that corroborates the testimony that these charges were incurred. I therefore dismiss the Landlord's claim for hydro costs.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,750.00, which is comprised of \$1,700.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,150.00. 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.

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: December 04, 2012.

Residential Tenancy Branch