



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on November 8, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were personally given to the tenant, at the landlord's address, at mid-day. The tenant had come to the landlord's home to pick up some mail and was served in the presence of the landlord's neighbour.

These documents are deemed to have been served in accordance with sections 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The details of the dispute section of the application set out a claim for unpaid rent and loss of rent revenue; therefore, I have also considered a claim for damage or loss under the Act.

On January 25, 2013 the landlord submitted 14 pages of evidence, sent to the Residential Tenancy Branch (RTB) via facsimile. This evidence was not before me and was late, as it was not given at least 5 days prior to the hearing. The landlord confirmed that she had not given the evidence package to the tenant as the documents would have been in his possession previously.

As the landlords evidence was not given to the RTB within the required time-frame and, as that evidence was not given to the tenant; the landlord proceeded with oral submissions only; the written evidence was not referenced. The landlord declined to withdraw the application and wished to pursue the claim via oral submission.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue in the sum of \$2,700.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

On August 23, 2012 the tenant signed a 12 month fixed-term tenancy agreement commencing September 1, 2012. Rent was \$1,350.00, due the first day of each month. The tenant gave the landlord 12 post-dated rent payment cheques.

On September 28, 2012, the tenant sent the landlord an email telling her he would be vacating, as the home was too far from the university bus. The tenant vacated on October 2, 2012 and did not pay October, 2012 rent.

The landlord has advertised the unit at the same rent on several popular web sites and a university web site, but has yet to locate a new occupant. The landlord is claiming unpaid October 2012 rent in the sum of \$1,350.00 and loss of November, 2012 rent in the sum of \$1,350.00.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, pursuant to section 44 of the Act, that the tenancy ended on October 2, 2012, when the tenant vacated the unit.

The landlord provided affirmed testimony that the tenant signed a fixed-term tenancy agreement; however, a copy of that agreement was not submitted as evidence. Therefore, in the absence of the tenant, who was given notice of this hearing, I find that the landlord is entitled to unpaid rent in the sum of \$1,350.00 for the month of October 2012.

Notice given on September 28, ending a month-to-month tenancy, would have been effective on the last day of October, 2012. Therefore, I find that the tenancy was at least month-to-month and that the notice given by the tenant required him to pay October 2012 rent.

In relation to the term of the tenancy, in the absence of a copy of the fixed-term tenancy agreement, I find, on the balance of probabilities, that the landlord has not proven the loss of 1 month's rent revenue and I dismiss the claim for loss of November, 2012 rent revenue.

The landlord submitted her application on November 6, 2012, but did not submit evidence until January 25, 2012. The evidence was late and not given to the tenant, so it was not considered. The landlord said that the tenant could receive documents at the address contained on the application; however, I was not confident that this was the tenant's forwarding address, as he had not supplied one at the end of the tenancy. Therefore, I declined to request a copy of the tenancy agreement, as I could not be sure the tenant would receive that copy, for rebuttal purposes.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,400.00. 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

Conclusion

The landlord is entitled to a monetary order in the sum of \$1,400.00 for unpaid rent and filing fee costs.

The balance of the claim 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: February 05, 2013

Residential Tenancy Branch

