



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AISA REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

At the outset of this proceeding the Landlord affirmed that the Tenants vacated the property by June 1, 2013, and she has regained possession of the unit. She stated she wished to withdraw their application for an Order of Possession and proceed with their request for a Monetary Order.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 22, 2013, by the Landlord. The Landlord is seeking a Monetary Order for unpaid rent or utilities and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on May 24, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant is deemed served notice of this proceeding on May 29, 2013, five days after they were mailed, in accordance with section 90 of the Act. As each Tenant is deemed served notice of this proceeding, I continued with the hearing in the Tenants' absence.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; the tenancy agreement and addendum; and a 10 Day Notice to end tenancy for unpaid rent and utilities.

The Landlord testified that the parties entered into a fixed term tenancy agreement that began on January 31, 2013, and was set to end on January 31, 2014. Rent was payable on the first of each month in the amount of \$1,700.00 and on January 31, 2013, the Tenants paid \$850.00 as the security deposit.

On April 23, 2013, the parties signed a mutual agreement to end the tenancy effective May 31, 2013, as supported by the mutual agreement submitted into evidence. The Landlord advised that when the Tenants failed to pay the May 2013 rent a 10 Day Notice was posted to their door on May 7, 2013. A partial rent payment was received on May 16, 2013, in the amount of \$710.00 leaving a balance due of \$990.00.

The Landlord attended the unit on June 1, 2013, to conduct the move out inspection. The Tenants signed the move out condition form agreeing to deductions from their security deposit; however, no specific deductions were listed. The Landlord argued that the Tenants had agreed to apply the security deposit towards the unpaid rent; however, she forgot to write that on the move out form. She said she asked them for a forwarding address during the inspection but they told her they did not have it with them.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

In this case the evidence supports that the Tenants failed to pay May 1, 2013 rent in full which caused the Landlord to suffer a loss of rental income. Based on the foregoing, I find the Tenants breached section 26 of the Act by not paying the May 1, 2013 rent in full. Accordingly, I award the Landlord unpaid rent for May 2013 in the amount of **\$990.00** (\$1,700.00 – 710.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,040.00** (\$990.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: June 20, 2013

Residential Tenancy Branch

