



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is a Review Hearing granted. The Landlord filed an application for an order of possession and a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

The Landlord attended the review hearing by conference call and gave undisputed testimony. The Tenant did not attend or submit any documentary evidence. The Landlord states that he received the notice of a review hearing from the Tenant on June 10, 2013 by Registered Mail along with a copy of the Decision after an Application by the Tenant for a Review Consideration and the Application. The Landlord has submitted documentary evidence which was provided to both Tenants by Canada Post Registered Mail on June 13, 2013 which he confirmed was received on June 14, 2013 by online tracking. I accept the undisputed testimony of the Landlord and find that both parties have been properly served with the Decision obtained by the Tenant in an Application for Review and the notice of a Review Hearing.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on February 1, 2013 on a fixed term tenancy ending on January 31, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$2,000.00 payable on the 1st of each month and a security deposit of \$1,000.00 was paid on January 10, 2013.

The Landlord states that the Tenants were served with a 10 day notice to end tenancy for unpaid rent and utilities dated May 2, 2013 by Canada Post Registered Mail. The Landlord has provided a copy of a proof of service document which states that both Tenants were served by Canada Post Registered Mail on May 2, 2013. The notice states that \$2,000.00 in unpaid rent that was due on May 1, 2013 and \$143.65 for unpaid utilities following a written demand on March 18, 2013 remained unpaid. The notice shows an effective date of May 12, 2013. The Landlord has provided a copy of a letter dated May 14, 2013 which states that rent and utilities remain unpaid. The Landlord states that the Tenant made a late rent payment of \$2,000.00 by cheque on May 22, 2013 for which he issued a letter stating that the money was received for use and occupancy only and that he did not wish to reinstate the Tenancy.

The Landlord seeks a monetary order for \$9,809.61. This consists of \$4,000.00 (\$2,000.00 X 2 months) for loss of rent for June and July 2013, \$909.61 for unpaid utilities until the end of May 2013, \$700.00 for estimated unpaid utilities for June and July 2013, \$4,200.00 (\$1,050.00 X 4 months) for the loss of rental income for the downstairs rental unit for April to July 2013.

The Landlord states that his basement Tenant moved out at the end of March 2013 stating that the reason for vacating was the excessive noise coming from the upstairs unit. The Landlord states that he did not at first believe the downstairs Tenants when he was notified by email in early February of noise, but followed up with a letter dated February 19, 2013 raising a concern over noise complaints received a week earlier. The Landlord states that the Tenant gave notice to vacate on February 27, 2013 by email stating her concerns and the reasons for moving out.

Analysis

I accept the undisputed testimony of the Landlord and find that the Tenant was properly served with a 10 day notice to end tenancy for unpaid rent dated May 2, 2013 by Canada Post Registered Mail.

I find that the Landlord has established grounds for an order of possession based upon the 10 day notice to end tenancy issued for unpaid rent dated May 2, 2013. The Tenant paid rent late that was not within the allowed 5 day time frame and for which the Landlord issued notice that rent for May was received for use and occupancy only and not to reinstate the Tenancy. The Tenant has not filed for dispute resolution to dispute the notice and is conclusively presumed to have accepted that the Tenancy is at an end. The Landlord is granted an order of possession. The Tenants must be served with the Order. Should the Tenants fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord's request for compensation (loss of rent \$2,000.00 (July), unpaid utilities of \$700.00 (June and July)) is premature and that the Landlord has failed to provide any evidence of loss for this time period. The Landlord relies solely on estimates for utilities that have not yet been consumed and has failed provide any invoices or receipts for an actual amount for utilities for June and July of 2013. I dismiss those parts of the application with leave to reapply.

I find base upon the undisputed testimony of the Landlord that a claim for unpaid rent of \$2,000.00 for June 2013 has been established. The Tenant is still occupying the rental unit and has failed to pay any rent. The Landlord has also established a claim for unpaid utilities totalling, \$909.61 up until the end of May 2013 based upon the invoices provided.

As for the Landlord's claim for \$4,200.00 in loss of rental income for the basement rental unit of \$1,050.00 for 4 months (April to July), I find that the Landlord has failed to provide sufficient evidence to satisfy me that the upstairs Tenants were responsible for this loss. The Landlord's evidence shows that he was aware of the noise complaints from the beginning of the Tenancy for atleast 8 different complaints by the downstairs Tenant, but did not respond until the letter dated February 19, 2013 and that he warned the upstairs Tenants that any continuation of noise would result in a 1 month notice to end tenancy for cause. The Landlord's evidence show that 12 more incidents of noise complaints occurred between the February 19, 2013 letter and the end of March. The Landlord has not provided any evidence that a 1 month notice to end tenancy issued for cause (noise) was ever issued. I find that the Landlord has failed to provide any evidence that he mitigated any possible losses by following through on his warning letter or provide sufficient details to satisfy me that any efforts were made to re-rent the basement or provide any evidence that the unit was unrentable because of the upper suite Tenants.

The Landlord has established a total monetary claim for \$2,909.61. The Landlord is also entitled to recovery of the \$100.00 filing fee. I order that the Landlord retain the \$1,000.00 security deposit in partial satisfaction of the claim and I grant a monetary order for ~~\$1,909.61~~ **\$2,009.61**. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for ~~\$1,909.61~~ **\$2,009.61** for unpaid rent and utilities.
The Landlord may retain the security deposit.

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 21, 2013

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON July 12, 2013
AT THE PLACES INDICATED.

DISPUTE RESOLUTION OFFICER