



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0870125 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

Although the Landlord provided a monetary worksheet as evidence for this Hearing, it is noted that the total amount claimed in the worksheet is greater than the amount claimed in the application. At the onset of the Hearing, the Landlord stated that his claim was only for unpaid rent and the filing fee and made no mention of any other claimed amounts. As the Landlord did not amend the application in advance of the Hearing to increase the amount claimed and did not indicate at the Hearing that a greater amount than that claimed in the application was being sought, I decline to consider any claimed amounts other than those contained in the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on November 1, 2011 for a term ending April 30, 2012. The relevant part of the tenancy agreement provides that rent is payable monthly on the first day of the month at \$650.00. It further provides that if the Tenant fails to pay rent on the first day of each month the rent becomes \$725.00. The Landlord states that the Tenant paid a total of \$290.00 over the course of the tenancy and paid no security deposit. The Landlord states that he sublet this unit to the Tenant with the permission of the owners and that the tenancy of this unit between the Landlord and owners started in 2008. The Landlord states that as his tenancy agreement was not renewed, the Tenant's tenancy had to end as well.

The Tenant agrees that the only amount of rent paid to the Landlord was \$290.00 and states that for the period November 1, 2011 to March 30, 2013 the Tenant worked for the Landlord in exchange for no rent payable and no security deposit. The Tenant states that this was an oral agreement and for this period, the Tenant carried out the Landlord's duties while the Landlord was on holiday. The Tenant states that on April 1, 2012, the Landlord had been relieved of his duties by the owner and on that date a new tenancy agreement was entered into between the Tenant and the owner and new agent with rent of \$425.00. The Tenant states that the rent for April 2012 was paid to the new agent. The Parties agree that the Tenant moved out of the unit on April 30, 2012.

The Landlord states that the only agreement between himself and the Tenant was for the Tenant to work for free in exchange for not having to pay the rent on time or being evicted for late rent.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. A written tenancy agreement cannot be amended on an oral basis. Any change to a term of the tenancy agreement must be in writing in order to be effective. Section 7 of the Residential Tenancy Regulation (the "Regulation") provides for a maximum of \$25.00 for a late rent fee. Section 6 of the Act provides that a term of

a tenancy agreement is not enforceable if it is inconsistent with the regulations. As the tenancy agreement provides that a lesser rent is payable on the first day of each month and a greater amount is payable if paid after, and given the net difference between the amounts, I find that the larger amount is in effect the rent plus a late fee that exceeds the amount allowed under the Regulation. As this is inconsistent with the Regulation, I find the greater amount of rent to be of no effect and I dismiss the Landlord's claim for any rent in excess of the \$650.00 monthly amount.

Although the Landlord's evidence that the Tenant could work for free in exchange for not being evicted tends to support the Tenant's assertion that no rent was payable for the period November 1, 2011 to March 30, 2012, as there was no amendment to the tenancy agreement and as this agreement between the Landlord and Tenant was oral and in relation to employment, I find that the tenancy agreement was not amended and that the Landlord has substantiated that the Tenant was obligated to pay the rent under the tenancy agreement as it was due.

Given the lack of a copy of a tenancy agreement between the Tenant and the owner or any other proof that the rent for April 30, 2012 was paid to another party or agent for the same unit under the above tenancy agreement, I find that the Landlord has substantiated on a balance of probabilities that the tenancy agreement included rent for April 2012 and that this rent was unpaid. Based on the above finding that rent of \$650.00 was the amount of rent payable and on the undisputed evidence that \$290.00 was the total rent paid for the duration of the tenancy, I find that the Landlord has substantiated that the Tenant owes **\$3,610.00** ($650.00 \times 6 \text{ months} - \290.00) to the Landlord in unpaid rent. As the Landlord has been primarily successful with its claim, I find that the Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$3,660.00**.

I dismiss the Landlord's claim for recovery of a filing fee paid on a previous application as that matter would have been dealt with in the previous decision for that hearing.

Conclusion

I grant the Landlord a monetary order under Section 67 of the Act for **\$3,660.00**. If necessary, this order may be filed in the 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: July 10, 2013

Residential Tenancy Branch