



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, FF

Introduction

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

The landlord and the male tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing; the landlord made a submission with his application, the tenant did not make any written submission.

Preliminary Matters

At the start of the hearing the landlord provided what I found to be vague testimony in relation to service of the Notice of hearing package. Initially he thought the packages had been given to the female tenant; then the landlord said he had given the packages to the male tenant. Personal service had occurred on May 4, 2013, at the rental unit with the landlord's sister present as witness.

There was no dispute that some time during the last week of April or the 1st week of May, 2013 the male tenant received the hearing package. When the male tenant signed into the hearing he had used the Notice of hearing issued in the female tenant's name; she had also been named as a respondent. The tenant's testimony aligned with that of the landlord, that at least by the 1st week of May 2013 he had received the hearing package.

The tenant said that he received the hearing documents, including the evidence, and that he made an entry in his computer to remind him of the hearing. At the time the tenant was in poor condition and had just been released from hospital, so he did not make any written submissions. When the tenant received the reminder of the hearing he did not have time to prepare or make a written submission.

In the absence of the female tenant and, given the landlord's testimony, I determined that proof of service to the female tenant was not proven. Therefore, the application was amended to remove that tenant as a respondent.

At the start of the hearing, when attempting to obtain specific responses to my questions the tenant became very combative and threatened to exit the hearing. The tenant accused the arbitrator of not allowing him to speak. I explained that the tenant would have an opportunity to be heard but that he must first respond to my specific questions in relation to the service of documents and preliminary matters. After several instances where the tenant had to be reminded of the arbitrator's authority to manage the hearing, he did fully cooperate and was then given an opportunity to make submissions.

The application was amended to include a claim for unpaid June and July 2013 rent as there was no dispute that rent has not been paid since December 2013. It is the sum owed each month that is in dispute.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the 1 year fixed term tenancy commenced on October 1, 2012. Rent is \$1,300.00 per month, due on the 1st day of each month. The landlord is holding a security deposit in the sum of \$650.00.

The parties agreed that the copy of the tenancy agreement supplied as evidence also included an addendum signed by both parties; neither party supplied a copy of that addendum.

There was no dispute that the addendum included a rent reduction of \$100.00 per month, should the landlord fail to complete repairs to the rental unit. The landlord said that he has not completed any repairs and that he would not disagree that rent should be reduced by \$100.00 per month.

The parties disagreed on the content of the addendum beyond the \$100.00 rent reduction. The tenant stated that \$3,500.00 was also to be deducted if repairs were not completed; the landlord said that the sum of \$3,500.00 had been included as a limit to the amount the tenant could seek, if the landlord failed to meet his obligation to repair.

In the absence of agreement on the terms of the addendum I made the following Order:

- By 3:30 p.m. on July 23, 2013 each party will submit their original copy of the addendum to their local Service BC office;
- Each party will request that the document be sent to the Residential Tenancy Branch (RTB) via facsimile and that their original be sent to the RTB;
- That if an obvious addition was made to either document it would likely be found to be of no value;
- That if only 1 document was submitted that document would be referenced in the absence of the 2nd document;
- That if neither party submitted their addendum I would issue a decision based on testimony.

The parties both agreed they could comply with the request for their documents. Copies of the documents were supplied by each party. The landlord's copy included the initials of the parties; it also included some hand-written notes. The tenant's copy was not signed and did not include the hand-written notes. The tenant submitted that his signed copy of the addendum was in "dead storage" and it would be submitted within the next day. I considered the copies that were provided as had been directed during the hearing.

The "addendum to rental agreement" supplied by each party included consistent information; that rent was to be reduced if repairs were not completed. The tenant had agreed that the sum of deduction would be \$100.00. The addendum also indicated:

"that if the items are not completed, or if we are compelled to relocate, we will be seeking \$3500 in Provincial court to cover our moving expenses."

The tenant did not dispute the landlord's claim in relation to unpaid rent; he agreed that he has not paid rent since December, 2012. The tenant did dispute the amount of rent owed each month.

Analysis

Based on the evidence before me I find that rent was originally \$1,300.00 per month. I find that the addendum term has resulted in a decrease in rent owed in the sum of \$100.00 per month, as the landlord has confirmed that repairs have not been completed, as agreed to in the addendum. I find that the reduction is \$100.00 per month, the amount the tenant acknowledged during the hearing.

Therefore, I find that rent owed from January to July 2013, inclusive, is \$1,200.00 per month and, pursuant to section 67 of the Act, I find that the landlord is entitled to compensation in the sum \$8,400.00. The tenant has confirmed that no rent has been paid during this time.

I find that the term included in the addendum referencing Court action has no bearing on the amount of rent owed.

I decline filing fee costs to the landlord; the receipt for this cost could not be produced by the landlord.

Based on these determinations I grant the landlord a monetary Order in the sum of \$8,400.00. 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 compensation for unpaid rent from January to July, 2013, inclusive. A monetary Order has been issued.

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 25, 2013

Residential Tenancy Branch