



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

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

The agent for the landlord provided affirmed testimony that on September 5, 2013 he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant, on the deck of the rental unit. Another occupant, A.V. was present as a witness. Service occurred mid-day.

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

Preliminary Matter

As the address of the landlord and dispute address were the same I considered jurisdiction. The landlord stated that he has a lease signed with his brother, who owns the property. The landlord then acts as agent for his brother, locating roommates, in order to reduce costs. The owner of the property expects his brother to have roommates and to manage those occupants on his behalf. The owner refers to his brother as his property manager.

Therefore, as the landlord/applicant acts as agent for the owner of the property, I determined that he meets the definition of landlord and that jurisdiction applies.

The landlord applied for dispute resolution on September 4, 2013. The 15 page evidence submission was not given to the tenant until sometime earlier in the week of the hearing; the landlord was not sure of the date.

RTB Rules of Procedure require service of evidence to the respondent no later than 5 days prior to the hearing; perhaps Monday or Tuesday. Therefore, as the evidence was not given to the tenant at least 5 days prior to the hearing I found that the evidence would be set aside. The landlord was at liberty to provide oral submissions.

The tenant vacated the unit on October 1 or 2, 2013; an Order of possession is not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and utilities in the sum of \$2,051.00?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced 1 year ago; rent was \$560.00 per month, due on the 1st day of each month. A security deposit in the sum of \$280.00 was paid. A tenancy agreement was not signed.

The landlord claimed unpaid utilities but copies of bills and evidence setting out payment terms for utilities was not provided.

The landlord provided testimony that the tenant failed to pay June and July 2013 rent. In August the tenant made a payment in the sum of \$560.00 and no further payment was made. The landlord applied the August payment to June 2013 rent owed and has claimed unpaid rent for July, August and September, 2013, inclusive, in the sum of \$1,680.00.

Some rent was owed from previous months, but the landlord could not say, with certainty, when the payments had not been made.

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.

In the absence of evidence to the contrary and submissions from the tenant, who was served notice of this hearing, I find that the tenant has not paid rent in the amount of \$1,680.00 for July, August and September, 2013, inclusive and that the landlord is entitled to compensation in that amount.

In the absence of a clear record of past rent owed I find that the balance of the claim for unpaid rent is dismissed.

In the absence of evidence setting out the terms for utility payment and of any verification of the cost of utilities and service of bills to the tenant, I find that the claim for utilities is dismissed.

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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$280.00, in partial satisfaction of the monetary claim.

I find, pursuant to section 67 of the Act, that the landlord has established a monetary claim, in the amount of \$1,730.00, which is comprised of \$1,680.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,450.00. 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.

The balance of the monetary claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: October 11, 2013

Residential Tenancy Branch

