



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB; MNR; MNDC; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; for compensation pursuant to the provisions of the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord stated that the Tenants signed a tenancy agreement on April 21, 2015, but did not move into the rental unit. Therefore, the Landlord's application for an Order of Possession is dismissed as the Landlord has taken back possession of the rental unit.

The Landlord testified that she mailed the Notice of Hearing documents and copies of her documentary evidence to each of the Tenants, by registered mail on July 6, 2015, at the address where they currently reside. The Landlord stated that the Tenants did not give her their new address, but that she received confirmation from a "listing/selling" agent that the Tenants have a one year lease on their current home which has been sold.

The Landlord stated that both of the Tenants' registered documents were returned unclaimed. The Landlord provided colour photocopies of both of the registered envelopes.

I accept the Landlord's evidence that the documents were sent by registered mail to the Tenants' new address. I find that the Tenants were sufficiently served in accordance with the provisions of Section 71 of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony:

The Landlord testified that the parties signed a tenancy agreement on April 21, 2015, a copy of which was provided in evidence. The tenancy was to start on May 1, 2015, but the Tenants did not move into the rental unit. The Landlord stated that on April 25, 2015, the Tenants told her they had changed their minds about moving into the rental unit. The Landlord testified that she advertised the rental unit right away in three on-line sites, and put up a notice at the local hospital and a realty office. The Landlord provided copies of the notice and copies of the listings that were on-line. The Landlord stated that she was able to re-rent the rental unit effective July 1, 2015, but for \$50.00 less rent a month.

Monthly rent pursuant to the tenancy agreement is \$1,700.00, due on the first day of each month. Rent did not include utilities. The security deposit was \$850.00, but the Tenants did not pay the security deposit.

The Landlord testified that the tenancy agreement was a one year lease. She stated that her insurance was increased for two months because the rental unit was vacant. The Landlord provided a Monetary Order Worksheet, which provides the following claim:

2 months lost rent (May and June, 2015)	\$3,400.00
10 months reduced rent (\$50.00 x 10)	\$500.00
Extra insurance for May and June, 2015	\$159.00
Basic power charge (no usage) x 2 months	\$30.33
Advertising costs	\$15.75
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$4,155.00

The Landlord provided copies of invoices for insurance, ad costs and utilities.

Analysis

The copy of the tenancy agreement provided in evidence indicates that the tenancy ends at the end of the fixed term; however, it does not contain an end-of-tenancy date. A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date. The agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month

tenancy. Therefore, as the parties did not agree to a date that the tenancy ends, I find that this was a month-to-month tenancy.

The Landlord provided a copy of a Mutual Agreement to End a Tenancy, which was signed by the Tenants, but not the Landlord. Therefore, I further find that the Landlord had notice that the Tenants were ending the tenancy on April 25, 2015. I find the provisions of Section 45(1) of the Act apply and that the Landlord is entitled to unpaid rent for the month of May, 2015, in the amount of **\$1,700.00**.

I dismiss the Landlord's claim for loss of revenue for the month of June, 2015, because the Tenants were entitled to end the tenancy on one month's notice under Section 45(1) of the Act.

I dismiss the Landlord's claim for recovery of 10 months of reduced rent, as I have determined that the tenancy was not a term lease. Likewise, I dismiss the Landlord's claim for advertising costs.

Pursuant to the provisions of Section 67 of the Act, I find that the Landlord is entitled to the cost of additional insurance for the month of May, 2015, in the amount of **\$79.50**.

The Landlord's documentary evidence confirms that basic customer charge for utilities for 40 days is \$20.22. Rent did not include utilities and I find that the Landlord is entitled to the usage cost of utilities for May, 2015, in the amount of **\$15.67**, calculated as follows:

$$\begin{aligned} \$20.22 / 40 \text{ days} &= \$0.5055 \text{ per day} \\ \$0.5055 \times 31 \text{ days} &= \$15.67 \end{aligned}$$

The Landlord's Application had merit and I find that she is entitled to recover the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$1,700.00
Additional insurance costs	\$79.50
Basic charge for utilities for the month of May, 2015	\$15.67
Recovery of the filing fee	\$50.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,845.17

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of **\$1,845.17** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 22, 2015

Residential Tenancy Branch

