



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for a monetary order for unpaid rent and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that he served the tenant with the application for dispute resolution and notice of hearing by registered mail within 3 days of making his application and provided a receipt showing the tracking number. The landlord stated that the registered mail was sent to the tenant's work address and during the hearing, an online search of the Canada Post website showed that the tenant signed for the registered mail.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of a written tenancy agreement showing that this 2 year, fixed term tenancy began on September 1, 2013, was set to end on August 31, 2015, and that monthly rent was \$1000.00.

The landlord submitted that the tenant vacated the rental unit without notice, but that he did not know when the tenant vacated. When the tenant's pre-paid June 2015 rent cheque was returned by the bank, the landlord came to understand that there was something amiss with the tenancy, causing him to attend the rental unit sometime in July, according to the landlord. Upon entrance to the rental unit, the landlord found a note from the tenant informing him that she, the tenant, was on vacation for 3 weeks, according to the landlord. The landlord submitted a copy of the note.

The landlord submitted that by the end of July 2015, he realized that the tenant was not returning; however, the tenant failed to pay rent for June and July. The landlord's claim also included a claim for loss of rent revenue for August, due to the tenant's insufficient notice.

The landlord's additional relevant evidence included copies of the notices from the bank regarding the returned cheques.

The landlord submitted that he sent his additional evidence to the tenant via registered mail, and I accept his submissions.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I find that under the terms of the tenancy agreement, the tenant was obligated to pay monthly rent for June and July 2015, and failed to do so. I therefore approve the landlord's claim for unpaid rent for those two months, or \$1000.00 each.

As to the landlord's claim for loss of rent revenue for August 2015, Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, August 31, 2015, subject to the landlord's requirement that he take reasonable measures to minimize his loss.

In this instance, I find the landlord submitted sufficient, undisputed evidence that he took reasonable steps to mitigate his loss of unpaid rent and was able to secure a new tenant by September 2015.

I therefore grant the landlord's claim for loss of rent revenue for August, or \$1000.00.

I also grant the landlord recovery of his filing fee of \$50.00 paid for this application.

I dismiss the landlord's claim for registered mail costs, as the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

Due to the above, I therefore find that the landlord is entitled to a monetary award of \$3050.00, comprised of unpaid rent of \$1000.00 for June 2015, unpaid rent of \$1000.00 for July 2015, a loss of rent revenue of \$1000.00 for August 2015, and the \$50.00 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of his monetary award of \$3050.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British

Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application has been successful, as he has been granted a monetary award of \$3050.00 for unpaid rent, loss of rent revenue, and for recovery of the filing fee.

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 8, 2015

Residential Tenancy Branch

