



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord and the male Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord’s Application and documentary evidence by registered mail. The Tenant also confirmed that he had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Matters

The parties confirmed that the Tenants had vacated the rental unit and the Landlord had received vacant possession of it. Therefore, I dismissed the Landlord’s request for an Order of Possession.

The Landlord explained in his written submissions that he was unable to serve the female Tenant that was part of this tenancy with notice of this hearing as she had previously vacated the rental unit. Therefore, I amended the Landlord’s Application to remove the female Tenant who does not appear in the style of cause on the front page of this decision.

The Landlord confirmed the Application made on November 2, 2015 was in relation to unpaid rent in the amount of \$4,000.00. The Landlord explained that in the interim time period after the Tenant had vacated the rental unit, he discovered extensive damage to the rental unit. As a result, the Landlord updated his monetary claim by amending the

Monetary Order Worksheet to include rent loss and damages to the rental unit. However, the Landlord confirmed that he had not amended his Application to include damages to the rental unit and had not served an amended Application to the Tenant for the increased amount. The Tenant disputed some of the damages the Landlord was claiming for.

As a result, I determined that I would only make findings in relation to the Landlord's monetary claim for unpaid rent but would provide leave to re-apply for damages to the rental unit as the Tenant had not been put on sufficient notice for this claim amount. However, I did allow the Landlord to amend his Application regarding rent loss for December 2015 pursuant to Section 64(3) (c) of the Act.

I also note that at the end of the hearing, the Tenant and Landlord engaged in a process of attempting to negotiate an amount for damages to the rental unit. However, the hearing was interrupted by technical difficulties being experienced by the whole of British Columbia. The Landlord dialed back into the hearing but the Tenant did not, despite the line being left open until 10 a.m. A message was also left for the Tenant to dial back into the hearing to continue these discussions but he did not.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid and lost rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the claim for unpaid and lost rent?

Background and Evidence

Both parties agreed that this tenancy started on February 1, 2015 for a fixed term of one year with both Tenants. A written tenancy agreement was signed and rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,500.00 was paid by the Tenants at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenants failed to pay rent for October 2015. As a result, the Landlord served the male Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on October 6, 2015. The Notice had a vacancy date of October 31, 2015 due to unpaid rent for October 2015. The Tenant confirmed receipt of the Notice on October 6, 2015.

The Landlord testified that the Tenant failed to pay the October 2015 rent and also failed to vacate the rental unit on the vacancy date of the Notice. In addition, the Tenant did not pay rent for November 2015 and vacated the rental unit on November 5, 2015.

The Landlord testified that he was unable to re-rent the unit for December 2015 because the Tenant had caused a significant amount of damage to the rental unit. The Landlord provided a large amount of photographic evidence indicating significant damage to the rental unit. The Landlord testified that this did not leave sufficient time for him to remedy the damage and advertise it for re-rental for December 2015. The Landlord explained that he had still not rented it out for January 2016 but was not claiming for this month. As a result, the Landlord now seeks to recover three months' rent from the Tenant in the amount of \$6,000.00.

The Tenant acknowledged that he had not paid rent for October and November 2015 because he fell on hard times and did not have work. So much so that power to the rental unit was cut off by the utility company because he could not pay the bills. The Tenant took responsibility for the October and November 2015 rent but disputed the Landlord's claim for December 2015 rent. The Tenant explained that he had caused some damage to the rental unit. However, the Tenant claimed that he could not clean the rental unit as it was dark because he had no power and could not see the damage and cleaning that had to be remedied. The Tenant testified that he had vacated the rental unit on November 4, 2015. The Tenant also confirmed that he had not given any written notice to the Landlord that he was going to vacate the rental unit on this date.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. In relation to the Landlord's claim for October and November 2015 unpaid rent, I find the Landlord is eligible for this amount as the Tenant acknowledged that this had not been paid. Furthermore, even if a fixed term tenancy is ended for unpaid rent, the tenant would still be responsible for the landlord's losses up until the landlord was able to re-rent the unit. Policy Guideline 3 to the Act provides guidance on claims for rent and damages for loss of rent. The policy guideline at the end explains the following:

"Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner."

[Reproduced as written]

Based on the foregoing, I find that as the Tenant vacated the rental unit in the November 2015 period this would not have given sufficient time for the Landlord to re-rent the property for December 2015. Furthermore, I accept the Landlord's evidence and the Tenant's testimony that there was damage to the rental unit. I find that this would have further hindered the Landlord's ability to re-rent the unit for December 2015. Therefore, I grant the Landlord's Application for unpaid rent in the amount of **\$6,000.00**.

As the Landlord has been successful in this matter, I also grant the Landlord the recovery of the **\$50.00** filing fee pursuant to my authority under Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$6,500.00**. As the Landlord already holds \$1,500.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monterey Order for the remaining amount of **\$4,550.00**.

This order must be served on the Tenant and may then be filed and enforced in the Small Claims division of the Provincial Court as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent and causing the Landlord to suffer rent loss. Therefore, the Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of **\$4,550.00**.

The Landlord's request for an Order of Possession is dismissed. The Landlord's claim for damage to the rental unit is dismissed with leave to re-apply. However, the parties are encouraged to work together on the damages to the rental unit as a mutual agreement may be more favorable than an outcome obtained through dispute resolution. 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: January 05, 2016

Residential Tenancy Branch

