Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   OPR, MNR, MNDC, FF

<u>Introduction</u>

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act;* served in person to the tenant on February 18, 2017 with two witnesses present.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant has vacated the rental unit on a date unknown and therefore the landlord withdrew his application for an Order of Possession. The landlord also withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

<u>Issue(s) to be Decided</u>

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

<u>Background and Evidence</u>

The landlord testified that this tenancy started on November 03, 2016. Rent for this unit was $900.00 per month due on the first of each month. November's rent was prorated for the month. The tenant paid a security deposit of $450.00 on November 03, 2016. A copy of the signed tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenant failed to pay rent for December, 2016 and January, 2017. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) on January 20, 2017. A copy of the Notice has been provided in documentary evidence. This Notice informed the tenant that he owes rent of $1,800.00 and that he had five days to either pay the rent or dispute the notice or the tenancy would end on January 30, 2017.

The landlord testified that the tenant did not pay the rent and did not file an application to his knowledge to dispute the Notice. The tenant did; however, sublet the rental unit to someone else on February 01, 2017 without the landlord's permission. The sublet tenant informed the landlord that the tenant had told him that he owned the rental unit and the tenant collected rent form this sublet tenant and a security deposit. This rent and security deposit was not passed onto the landlord.

The landlord has received no rent for February or March and testified that now he has met the sublet tenant he is happy for him to continue to reside in the rental unit as the landlord's tenant and a new tenancy agreement will be entered into with that person. The landlord testified that this sublet tenant has agreed to pay rent for March to the landlord and therefore the landlord adjusts his claim to reflect this against the other tenant. The landlord's claim for unpaid rent is therefore reduced to $2,700.00.

The landlord also seeks to recover his filing fee of $100.00 from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

I refer the parties to s. 26 of the *Act* which states*:*

> *26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I refer the parties to s. 34(1) of the *Act* which states:

> *34(1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.*

I am satisfied from the evidence before me that the landlord was not asked by the tenant if he could sublet or assign the tenancy to a third party and the tenant did so without the landlord's written permission. I also find the tenant collected a security deposit and rent from this sublet tenant for February but did not pay any rent to the landlord. The tenant also owed rent for December and January. The landlord was then entitled to serve the tenant with a 10 Day Notice to End Tenancy and had the tenant still been occupying the rental unit , the tenancy would have ended for the tenant and any sublet tenants.

The landlord has agreed to enter into a tenancy agreement with the sublet tenant from March, 2017 and therefore that tenant will be responsible for the rent form march 01, 2017. The tenant is still responsible for the rent prior to this for December, January and

February. I therefore find in favor of the landlord's amended application to recover the unpaid rent of **$2,700.00**. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **$2,800.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 15, 2017

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Residential Tenancy Branch