



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent; to apply the security deposit towards his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord and the Tenant's agent gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents the Tenant, by registered mail, on December 3, 2010. The Landlord provided the tracking number for the documents. He stated that he searched the Canada Post website to track the documents and discovered that there had been an attempted delivery on December 6, and a Notice was left indicating where the parcel could be picked up. Canada Post attempted to deliver the documents again and provided a final Notice on December 29, 2010. The Tenant picked up the documents on January 17, 2011.

Preliminary Matter

On April 5, 2011 (the day before the Hearing) the Tenant's agent provided a letter to the Residential Tenancy Branch. The letter was written by the Tenant and requested an adjournment because "a severe health issue has arisen, as my health has been failing, and it is taking me into hospitalization".

The Landlord testified that the Tenant did not notify him that she was requesting an adjournment and that he was opposed to an adjournment.

Rule 6 of the Rules of Procedure provides the methods by which adjournments can be sought. If the Residential Tenancy Branch receives written consent from both parties before noon at least three business days before the scheduled date of the Hearing, the Hearing will be rescheduled. If the opposing party does not consent to the adjournment,

the Hearing must commence at the scheduled time and the party requesting the adjournment can ask for the adjournment by:

- Providing a written request to the Residential Tenancy branch at least three business days prior to the Hearing, outlining the reason for the request; or
- Having an agent represent him or her at the Hearing to describe the circumstances that are beyond the party's control that prevent the party from attending the Hearing.

In this case, the Tenant did not attempt to obtain the Landlord's written consent at least three days prior to the Hearing, or at all, and did not provide her written request to adjourn the Hearing at least three days prior to the Hearing.

The Tenant's agent stated that the Tenant was not in the hospital at the time of the Hearing, but was ill. The Tenant did not provide any documentary evidence supporting her agent's statement (i.e. no Doctor's note).

Based on the foregoing reasons, I dismissed the Tenant's application for an adjournment, and the Hearing continued.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order for unpaid rent for the month of December, 2010?

Background and Evidence

This was a month-to-month tenancy that began on February 1, 2005. Monthly rent at the beginning of the tenancy was \$2,200.00, due the first day of each month. Rent included utilities. The Tenant paid a security deposit in the amount of \$1,100.00 on January 5, 2005. Rent at the end of the tenancy was \$2,365.00.

The Landlord gave the following testimony:

The Landlord found a letter in his mailbox on December 1, 2010, advising that the Tenant had moved out of the rental unit. The Tenant did not give the Landlord 30 days notice, as is required by the tenancy agreement. Therefore, the Landlord seeks a monetary award for loss of revenue for the month of December, 2010.

The Tenant's agent gave the following testimony:

The Tenant had to move out of the rental unit because of health issues due to moisture and mould in the rental unit. She was under her Doctor's orders to do so.

The Tenant did not give the Landlord written notice of the mould or moisture problems, but did tell the Landlord about it. The Landlord's response was that she could move out. Therefore, the Tenant's position is that the Landlord gave her notice to end the tenancy.

Analysis

It is important to note that this Hearing dealt with an Application by the Landlord. The Tenant has not filed an Application for Dispute Resolution with respect to any damages she feels she has incurred, and is at liberty to do so should she so choose.

Section 44 of the Residential Tenancy Act describes the only methods by which tenancies end in British Columbia. A landlord cannot end a tenancy by telling a Tenant that she can move. There is no such provision in the Act.

Section 45 deals with a tenant's notice to end a tenancy. Section 45 states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Tenant did not provide written Notice in accordance with the provisions of Section 45(1) of the Act, nor did she provide written Notice in accordance with the provisions of Section 45(3) of the Act. I find that the Tenant's non-compliance with Section 45 of the Act caused the Landlord to lose revenue for the month of December, 2010. The Landlord's application for a monetary award for loss of December's rent revenue is granted. The Landlord indicated on his Application that he sought a monetary order for only \$2,285.00 (rather than \$2,365.00), and I allow his claim in that amount.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit, together with accrued interest in the amount of \$38.91, in partial satisfaction of its monetary claim.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fees from the Tenant.

I hereby provide the Landlord with a monetary order against the Tenant, calculated as follows:

Loss of revenue	\$2,285.00
Recovery of filing fee	\$50.00
Less security deposit and accrued interest	<u><\$1,138.91></u>
TOTAL amount due to Landlord after set off	\$1,196.09
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Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,196.09** for service upon the Tenant. 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: April 18, 2011.

Residential Tenancy Branch