



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for loss of rental income and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on June 21, 2008 and ended on September 30, 2008. Rent was \$950.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$475.00 on June 21, 2008.

The Landlord claimed that the Tenant did not give written notice that he was ending the tenancy and as a result, the rental unit could not be re-rented for October, 2008. Mr. Adcock said that the Tenant advised him verbally on September 5, 2008 that he might be moving at the end of September but was unsure as he did not know if he had a house to move into for that date. The Landlord claimed that he started advertising the rental unit for availability on October 2, 2008 at the same rental rate in one on-line publication and in one newsprint publication.

The Tenant argued that because there was no written tenancy agreement, he believed it was just temporary accommodations and that the Act would not apply. He admitted that he was unfamiliar with the provisions of the Act dealing with notice. The Tenant also argued that there a number of problems with the rental property during the tenancy including ongoing repairs, the smell from newly varnished floors, problems with the laundry and cockroaches. The Tenant claimed that he brought these issues verbally to the Landlord's attention but never did so in writing.

Analysis

Section 1 of the Act defines a tenancy agreement (in part) as an agreement, whether written or oral, express or implied. Although s. 13 of the Act requires a Landlord to prepare a written tenancy agreement, a tenancy can exist without one. Consequently, I find that there was a residential tenancy between these parties and that the Act applies.

Section 52 of the Act states that a Notice to End Tenancy must include certain information and must be in writing. The only exception to this provision would be if the Landlord waived the requirement of written notice. Section 45 of the Act states that a Tenant of a periodic tenancy must give at least one clear month's notice to the Landlord that he wants to end the tenancy. The only exception to this provision is if the Landlord was in breach of a material term of the tenancy agreement (or Act), the Tenant gave the Landlord a written notice to correct that situation but the Landlord failed to do so within a reasonable period of time (see s. 45(3) of the Act).

In this case, I find that the Tenant did not give the Landlord written notice that he was ending the tenancy at the end of September, 2008 and the Tenant admitted the Landlord did not waive this requirement. Furthermore, although the Tenant had a number of problems with the rental unit, he did put those concerns in writing and ask the Landlord to correct the situation within a reasonable period of time.

Section 7(2) of the Act says that a party who claims compensation for damage or loss as a result of another party's non-compliance with the Act must do whatever is reasonable to minimize the damage or loss. Where a Landlord claims compensation for loss of rental income, for example, the Landlord must show that he or she took reasonable steps to try to re-rent the rental unit as soon as possible. I find that the Landlord did take reasonable steps to re-rent the rental unit but was unable to find another tenant for October, 2008. Consequently, I find that the Landlord is entitled to compensation for lost rental income for October, 2008 in the amount of \$950.00.

Pursuant to s. 38(4), 62(3) and 72 of the Act, I order the Landlord to keep the security deposit plus accrued interest in partial satisfaction of the damage award. As the Landlord has been successful in this matter, he is entitled to recover the \$50.00 filing fee for this proceeding. The Landlord will be entitled to a monetary order for the balance as follows:

Loss or rental income:	\$950.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,000.00
Less: Security deposit:	(\$475.00)
Accrued interest:	<u>(\$3.19)</u>

TOTAL OWING: \$521.81

Conclusion

A monetary order in the amount of **\$521.81** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.