



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR MNSD OPR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Landlord withdrew the application for an Order of Possession, as the Tenant has returned the keys and the Landlord now has possession of the rental unit.

The Landlord asked to amend the application to include a claim to keep the security deposit paid by the Tenant. The Tenant agreed to the amendment, and the application was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to present their evidence orally and in writing, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to a monetary Order for liquidated damages; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that the parties had a fixed term tenancy that began on November 01, 2008 and was to continue until October 31, 2009. The parties agree that the monthly rent was \$940.00, and that the Tenants paid a security deposit of \$470.00 on October 20, 2008.

The Agent for the Landlord and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2008, was personally served on the Tenant on December 02, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$940.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord and the Tenant agree that the Tenant has not paid rent for December of 2008 or January of 2009. The Tenant stated that he vacated the rental unit on December 27, 2008, at which time his wife was still in the rental unit. He stated

that he has not communicated with his wife recently so he does not know if she is still in the rental unit. The Agent for the Landlord stated that the female Tenant vacated the rental unit on January 05, 2009.

The Agent for the Landlord is seeking compensation for loss of income for the month of January, due to the fact that one of the Tenants was still in the rental unit on January 01, 2009, which prevented the Landlord from finding new tenants.

The Landlord is seeking compensation, in the amount of \$40.00, for paying the rent late in December of 2008 and January of 2009. The tenancy agreement, which was signed by the Tenant, requires the Tenant to pay a fee of \$20.00 if the rent is not paid when it is due.

The Landlord is seeking compensation, in the amount of \$325.00, for liquidated damages. The tenancy agreement, which was signed by the Tenant, requires the Tenant to pay liquidated damages of \$325.00 if the Tenant ends the fixed term tenancy early.

Analysis

Both parties agree that rent was not paid for December of 2008, and I find that the Tenant owes the Landlord \$940.00 for outstanding rent from this period.

In the absence of evidence to the contrary, I find that one of the Tenants remained in the rental unit until January 05, 2009, which prevented the Landlord from renting the unit for January 01, 2009. I find that it is unlikely that the Landlord will be able to find new tenants prior to January 15, 2008, given that most tenancies begin on the first or the fifteenth of the month. I find that the Landlord is entitled to compensation for loss of

revenue from January 01, 2009 to January 14, 2009, in the amount of \$470.00. I dismiss the Landlord's application for compensation for loss of revenue for the latter portion of January, with leave to reapply on this single issue, if the Landlord is unable to rent the unit for January 15, 2009.

I find that the Landlord is entitled to a late payment fee of \$20.00 for not paying rent on time for December of 2008. I find that the Landlord is not entitled to a late payment fee of \$20.00 for January of 2009, as rent was not paid by the Tenant for that month.

I find that the Tenant did end the fixed term tenancy early, and that they must pay the liquidated damages of \$325.00, which was agreed to in the tenancy agreement.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,805.00, which is comprised on \$940.00 in unpaid rent from December; \$470.00 as compensation for loss of revenue from January; \$20.00 in late payment fees; \$325.00 in liquidated damages; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$471.41, in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,333.59. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 05, 2009