

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR FF MNSD

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Landlords gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order for loss of rent from December 1 to December 15, 2008?
- (2) Is the Landlord entitled to recover the cost of the filing fee for this application from the Tenant?

Preliminary Matter

At the onset of the Hearing, it was determined that the Tenant’s name was misspelled by leaving a letter out of his last name.

The Landlords testified that they mailed the Tenant the Notice of Hearing package and Application to the Tenant, using the correct spelling of the Tenant’s last name on the envelope. A copy of the registered mail receipt was provided into evidence, which indicates the correct spelling of the Tenant’s last name. Pursuant to Section 64(3)(c), I amended the Application to reflect the correct spelling of the Tenant’s last name.

Background and Evidence

Landlord's evidence

The Landlord AD testified that she mailed the Tenant a copy of the Application for Dispute Resolution and hearing package on December 15, 2008 by registered mail. The Landlord provided a Canada Post tracking number and a photocopy of the Canada Post Tracking search. The tracking search indicates that there was an attempted delivery made on December 16, 2008. The tracking search indicates that the postal employee left a notice card indicating where the item could be picked up. On January 3, 2009, the item was still unclaimed and was therefore returned to the Landlords. The Landlords testified that the Tenant abandoned the rental property on

The Landlords testified that the Tenant had verbally advised them that he would like to move out of the rental unit in time for them to re-rent the unit for December 2008. The Landlords testified that they agreed early termination, on the condition that the Tenant provide them with written notice stating that the unit is available for December 1, 2008; provide a forwarding address for return of the security deposit; and have the suite cleaned, inspected and ready for rent by November 12, 2008 in order to give the Landlords time to advertise, show the suite and decide on a suitable renter. The Landlords testified that they also advised the Tenant that if they were not able to re-rent the rental unit by December 1, 2008, the Tenant would be responsible for rent for the month of December. The Landlords provided a copy of a letter to the Tenant, dated November 9, 2008, which clearly stated the Landlords' position.

The Landlords testified that the Tenant abandoned the rental property prior to December 1, 2008, and did not participate in the move-out inspection or provide a forwarding address. The Landlords testified that they had to spend considerable time cleaning the rental unit before they could show it to potential tenants, but were not

applying for the cost of doing so. The Landlords testified that they were able to re-rent the rental unit on December 15, 2008.

The Landlords testified that monthly rent for the rental unit was \$900.00, and that the Tenant had provided a security deposit in the amount of \$450.00 on May 13, 2008. The Landlords applied for damages for loss of rent from December 1 to 15, 2008 in the amount of \$450.00, and to apply the security deposit towards that amount. The Landlords also applied for recovery of the \$50.00 filing fee.

Analysis

Section 90 of the Act stipulates that a document is deemed to be received, if given or served by mail, on the 5th day after it is mailed. I find that the Tenant is deemed to have been served with the Notice of Hearing and Application for Dispute Resolution on December 20, 2008.

The Landlords have established their monetary claim for loss of rent as follows:

Loss of rent from December 1 – 15, 2008: $\$29.589 \times 15 \text{ days} = \443.84
 $(\$900.00 \times 12 \text{ months} / 365 \text{ days} = \$29.589 \text{ per diem})$

The Landlords have been successful in their application and are entitled to recover the \$50.00 filing fee from the Tenant.

Pursuant to Section 72 of the Act, the Landlords may apply the security deposit of \$450.00, together with accrued interest of \$4.30, towards the amount owing to the Landlords.

I hereby grant a monetary order to the Landlords in the amount of \$39.54, calculated as follows:

Loss of rent	\$443.84
Filing fee	\$50.00
Less security deposit and interest	<u><\$454.30></u>

Balance owing to the Landlords	\$39.54
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Conclusion

I grant the Landlords a monetary order under section 67 of the Act for \$39.54. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

February 26, 2009
