



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes

MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord for a monetary claim related to loss of rent and damage or loss under the *Act*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined

Has the landlord established a loss related to non-payment of rent by the tenant? Has the landlord established a monetary loss due to the tenant refusing the home inspection on August 29, 2008?

Background and Evidence

This tenancy began on April 18, 2008 for the monthly rent of \$850.00. The signed tenancy agreement indicates that the tenancy was for a fixed term ending on September 18, 2008 and both the landlord and the tenant initialled the appropriate boxed in the tenancy agreement acknowledging that the tenant would have to vacate the rental unit on that date. The tenant paid a security deposit of \$425.00 on March 7, 2008.

In August 2008 both the tenant and the landlord were away on vacations. During this time the tenant's rent cheque bounced as it had insufficient funds. When the landlord returned in late August 2008 and spoke with the tenant the issue of the tenancy ending on September 18, 2008 was raised. The tenant disagreed with the landlord that she had agreed the tenancy would end on this date and stated that she was lead to believe she could stay as long as she desired.

As a result of this disagreement the tenant failed to pay any rent for August 2008 or September 2008. The tenant believed she was entitled to compensation as provided under section 49 of the *Act* in the circumstances. The landlord issued a 10 day Notice to End Tenancy due to non-payment of rent on September 2, 2008 and the tenant vacated the rental unit as of September 15, 2008. The landlord is seeking damages for the sum of \$1,275.00 due to the tenant's failure to pay rent for this time period.

In addition the landlord is seeking a monetary claim for the loss of \$1,000.00 which the landlord claimed she lost when the tenant refused to grant a home inspector in on that date. It was the submission of the landlord that this appointment was pre-arranged on the telephone by her realtor and the tenant. The landlord was unable to provide specific dates as to when the arrangements were made, but believed that the realtor likely

contacted the tenant around August 19, 2008. There was nothing in writing as required by the *Act* respecting this access to the rental unit.

The tenant submitted that realtor did contact her and set up the date of August 21, 2008 for the inspection. She did provide authorization for the inspector to access the rental unit while she was away at work. The tenant assumed that the inspection occurred. The tenant submitted that on August 29, 2008 she stopped at home briefly on lunch and the inspector arrived at her door. She could not stay for the inspection and was unwilling to allow the inspector in without a representative of the landlord in attendance.

Analysis

I grant the landlord's application in part. I accept the evidence before me that the tenant has failed to pay rent for August 2008 and from September 1 to 15th, 2008. I do not accept the tenant's oral evidence that there was an agreement that the tenancy was month to month. I prefer the written tenancy agreement which clearly states that the tenancy was a fixed term ending on September 18, 2008. As a result the tenant had no basis on which to expect that she was entitled to any compensation for the tenancy ending. I grant the landlord's claim for loss of rent in the sum of \$1,275.00.

I deny the landlord's claim for the loss of \$1,000.00 due to the cancelled home inspection. Section 29 of the *Act* states that the landlord must not enter the rental unit for any reasons unless a minimum of 24 hours written notice has been provided which states the purpose of entering and the date and time of entry. The tenant cannot unreasonably withhold consent if given proper notice by the landlord.

In the circumstances before me the landlord has failed to show that she provided written notice to the tenant as required by section 29. I accept the evidence of the tenant that she did agree to the inspection over the telephone and I accept that there was a mix up in the dates which resulted in the inspector arriving on an unexpected date and time. However, I do not accept that the tenant is liable for the landlord's loss. The landlord is responsible for her own loss by failing to follow the *Act*. If the arrangements had been made in writing as required I find there would not have been the mix up. I deny the landlord's request for this monetary loss.

I find that the landlord has established a total monetary of for the sum of \$1,325.00 comprised of the loss of rent of \$1,275.00 plus the recovery of the \$50.00 filling fee paid by the landlord for this application. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$430.23 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$894.77**.

Conclusion

The landlord's application is granted in part. I have issued the landlord a monetary Order for the sum of **\$894.77**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated March 19, 2009.

Dispute Resolution Officer