



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This conference call hearing dealt with an application from the landlord for a monetary order in compensation for unpaid rent / utilities / loss of rental income, retention of the security deposit in partial satisfaction of the claim, costs associated with damage or loss, and recovery of the filing fee. The landlord's agent and the tenant participated in the hearing and gave affirmed testimony.

The conference call hearing was originally scheduled for April 7, 2009, however, as technical errors prevented both parties from participating at the same time, the hearing was reconvened on April 23, 2009.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term tenancy was from October 1, 2008 to March 31, 2009. Rent in the amount of \$1,000.00 was payable in advance on the first day of each month, and a security deposit of \$500.00 was collected on September 24, 2008.

By way of handwritten note dated December 3, 2008, the tenant informed the landlord's agent that she had vacated the unit effective December 1, 2008. The tenant did not pay rent for December 2008 and payment for utilities is still outstanding. Neither orally nor in writing did the tenant inform the landlord's agent of her forwarding address. The landlord's agent testified that in spite of advertising, the unit was unable to be re-rented

for any portion of the fixed term of tenancy. In the result, the landlord seeks compensation for unpaid rent for December 2008, loss of rental income for January, February and March 2009, costs arising from advertising the vacant unit for rent, various unpaid utilities for the period in question, and repair / replacement of a broken linen closet door which the tenant acknowledges having removed from the unit.

Analysis

Section 44 of the Act speaks broadly to **How a tenancy ends**. In particular, section 44(1)(a)(i) of the Act provides as follows:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

Section 45 of the Act addresses **Tenant's notice** and provides, in part:

45(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.

Residential Tenancy Policy Guideline # 3 addresses **Claims for Rent and Damages for Loss of Rent**. In part, this Guideline provides as follows:

[In the event that the tenant ends a fixed term tenancy early] damages awarded [to the landlord] are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The manner in which the tenant gave notice to vacate the unit does not comply with the above statutory provisions. Further, in spite of the landlord's efforts to mitigate the loss of rental income by way of advertising, no new tenant was found for the unit prior to the end of the fixed term tenancy on March 31, 2009.

Clause # 7 in the tenancy agreement between the parties provides, in part, as follows:

The Tenant agrees to pay all power, telephone, heating, fuel and other utilities.

Pursuant to the documentary evidence which includes, but is not limited to, a copy of the tenancy agreement, the testimony of the parties, provisions included in the relevant legislation and Residential Tenancy Policy Guidelines, I find that the landlord has established a claim of \$4,890.42. This is comprised as follows:

- \$1,000.00 – unpaid rent for December 2008
- \$3,000.00 – loss of rental income for the 3 month period of January, February and March 2009
- \$ 141.05 – cost of advertising the vacant unit for rent
- \$ 170.52 – Terasen gas
- \$ 101.45 – Telus
- \$ 300.00 – ACN (this figure represents the amount agreed to between the parties during the hearing)
- \$ 127.40 – repair / installation of replacement door for linen closet

- \$ 50.00 – filing fee for this application

Sub-total: \$4,890.42

During the hearing the parties agreed that the tenant is entitled to the application of a \$50.00 credit against the above claim. Accordingly, the amount of the landlord's claim as shown above is reduced by \$50.00 to \$4,840.42.

I order that the landlord retain the security deposit of \$500.00 plus interest of \$2.03, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$4,338.39 (\$4,840.42 - \$502.03).

The full text of the relevant legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and other related information can be accessed via the website:

www.rto.gov.bc.ca/

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$4,338.39**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 24, 2009

Dispute Resolution Officer