



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision and Reasons

Dispute Codes:

FF,

MNDC,

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 provided by the Landlord prior to the Hearing. Both parties gave affirmed evidence and the Hearing proceeded on its merits.

Introduction

This is the Landlord's application for a Monetary Order for compensation for damage or loss; to keep the security deposit paid by the Tenant; and to recover the filing fee from the Tenant for the cost of the application.

Background and Evidence

The Landlord testified that he mailed the Tenant the Notice of Hearing package on March 13, 2009, by registered mail to the Tenant's forwarding address. The Landlord provided a receipt for the registered mail documents along with a tracking number.

The Landlord testified that he mailed the Tenant copies of the Landlord's evidence on May 28, 2009, by registered mail (express post, delivered May 29, 2009) to the Tenant's forwarding address. The Landlord provided a receipt for the registered mail documents along with a tracking number.

The rental unit is a 2 bedroom apartment on the 15th floor of the building. The tenancy started on November 1, 2008 and ended on February 28, 2009. The tenancy agreement was a term lease, due to expire October 31, 2009. The Tenant gave the Landlord a security deposit in the amount of \$780.00 on October 22, 2008. Monthly rent was \$1,560.00, due on the first day of each month. There was a move-in inspection and a move-out inspection done.

Landlord's agents' testimony

The Tenant gave the Landlord notice on February 2, 2009, that he was vacating the rental unit on February 28, 2009. The Tenant told the Landlord that he would be giving his notice, but that he had a brother who might take over the Lease. The Landlord advised the Tenant that if the rental unit could not be re-rented for March 1, 2009, he would be responsible for payment of rent for March 1, 2009. The Tenant agreed to have the following deductions applied from the security deposit: suite cleaning (\$2 hours) \$50.00; carpet cleaning \$94.50; and Lease Administration Fee \$250.00.

The Landlord attempted to re-rent the suite for March 1, 2009, by advertising on Craigs List. The Landlord held an open house on February 4, 2009, which was poorly attended. No applications flowed out of the open house. The Landlord was available for showing the suite by appointment 7 days a week. By February 11, 2009, there were no appointments for showing and the Landlord re-advertised on Craigs List at a reduced rent of \$1,500.00 per month. The Landlord received no interest in the rental unit, and on February 18 re-advertised the suite again for a reduced rent of \$1,450.00. This generated interest, and the Landlord showed the rental unit twice, but no applications were received. The Landlord re-advertised again on Craigs List on March 2, 2009, and

held another open house on March 4, 2009. No applications were received. On March 9, 2009, the Landlord placed another ad on Craigs List. On March 17, 2009, another tenant referred a prospective renter to the Landlord. The rental unit was rented to this person, with a move-in date of April 1, 2009.

The Landlord has always been successful in the past with advertising solely on Craigs List. The rental market is softening, and in these hard economic times, a lot of renters are looking for one bedroom or bachelor suites in an effort to keep costs down.

Tenant's testimony

The Tenant agreed that the Landlord could keep \$250.00 from the security deposit as a lease breaking fee. The Landlord did not advise the Tenant that it would be seeking additional damages if the rental unit was not re-rented by March 1, 2009.

The Tenant gave the Landlord written notice of his intent to vacate the rental unit on February 2, 2009, but had verbally advised the Landlord 2 weeks prior to giving his notice. The Tenant would have sublet the apartment to his brother or a friend if he knew the Landlord was going to claim damages. The Landlord took a "no cost" approach to re-renting the unit by advertising solely on Craigs List. Advertising more widely would have been more effective.

Analysis

There was conflicting testimony with respect to whether or not the Landlord had advised the Tenant of its intent to apply for damages if the unit was not re-rented for March 1, 2009. On the balance of probabilities, I accept that the Landlord did advise the Tenant.

The Tenant breached the lease agreement by ending the tenancy early, on late notice. I find that the Landlord is entitled to recover the loss of rent for the month of March,

2009. The Landlord did not apply for the difference between what it would have collected in rent from the Tenant and what the current tenants are paying in rent.

The Landlord did not provide evidence (i.e. receipts) for the cost of cleaning the suite, or for carpet shampooing. This portion of its claim is therefore dismissed.

The Landlord did not apply for the \$250.00 fee for liquidated damages in breaking the lease.

The Landlord has been partially successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may apply the security deposit towards partial satisfaction of its claim.

The Landlord has established a monetary claim as follows:

Loss of rent for March, 2009:	\$1,560.00
Recovery of the filing fee:	\$50.00
Less security deposit and interest of \$2.27:	<u><\$782.27></u>
TOTAL	\$827.73
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Conclusion

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$827.73 against the Tenant. 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.

June 15, 2009
