



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord made application for a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant made application for the return of double his security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The female Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on June 02, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered to the Tenant on June 03, 2009. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to a monetary order for damage to the rental unit; a monetary order for compensation for loss that resulted from the early end of a fixed term lease; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Tenant is entitled to the return of double his security deposit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

A tenancy agreement was submitted in evidence, which was signed by the Landlord and the Tenant, which indicates that this was a fixed term tenancy that began on September 01, 2008 and was scheduled to end on September 01, 2009; that the Tenant was required to pay monthly rent of \$1,800.00 on the first day of each month; that the Tenant is responsible for paying water, hydro and garbage fees; and that the Tenant paid a security deposit of \$1,800.00 on September 01, 2008. The female Tenant stated that they did not have a forwarding address for the Tenant until they received his Application for Dispute Resolution on April 23, 2009.

The female Landlord stated that this tenancy ended on February 28, 2009. The Landlords submitted a copy of a letter, dated February 25, 2009, in which the Tenant advised the Landlord of his intent to vacate at the end of February. He also requested permission to sublet the rental unit to two individuals, whose names he provided to the Landlord. The male Landlord stated that he telephoned the potential tenants on two occasions; that the potential tenants did not return his phone call; that on February 28, 2009 he advised the Tenant that the potential tenants had not made contact with him; and that the Tenant made no further arrangements to sublet the rental unit.

The male Landlord stated that the rental unit was advertised in the Time Colonist between March 11, 2009 and April 29, 2009. He stated that he had difficulty locating a new tenant during this period so he reduced the rent by \$100.00 per month and he was able to find a tenant for May 01, 2009. The Landlord is seeking compensation for loss of revenue, in the amount of \$1,800.00 per month, for March and April of 2009 during which time the rental unit was vacant. The Landlord is also seeking compensation, in the amount of \$100.00 per month, for May, June, July, and August of 2009, as compensation for the difference between the revenue that would have been generated if the fixed term tenancy had continued until the scheduled end date and the amount of revenue that was actually generated during this time period.

The Landlord is claiming compensation, in the amount of \$304.97, for costs associated to advertising this rental unit. The Landlord submitted an advertisement bill from the period between March 11, 2009 and March 17, 2009 in the amount of \$97.40. The Landlord submitted a second advertisement bill from the period between April 16, 2009 and April 29, 2009 in the amount of \$184.30. The Landlord submitted a third advertisement bill from the period between April 16, 2009 and April 24, 2009 in the amount of \$123.27, which he speculates is a duplication of the bill from the period between April 16, 2009 and April 29, 2009.

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The Landlord is claiming compensation, in the amount of \$20.00, for rent that was outstanding from February of 2009. The Tenant acknowledged that this rent was outstanding in the letter dated February 25, 2009.

The Landlord is claiming compensation, in the amount of \$332.65, for utilities. The Tenant acknowledged that he owed \$176.12 in utilities in the letter dated February 25, 2009. The Landlord submitted a copy of a utility bill from the City of Victoria, which shows that a fee of \$176.12 was paid on May 12, 2009. The bill shows that additional utility fees of \$177.56 were incurred between December 16, 2008 and April 15, 2009, which is an eighty-eight day period. The Landlord is claiming a prorated portion of this bill, in the amount of \$156.53.

In the Application for Dispute Resolution the Landlord claimed compensation, in the amount of \$178.25 for garbage removal. At the hearing the male Landlord stated that the claim reflected \$28.25 for dump fees, for which a receipt was submitted. He stated that the remaining \$150.00 was for labour, which included disposing of furniture and other personal items that were left inside and outside the rental unit and for completing minor repairs.

The witness for the Landlord stated that he spent approximately four hours disposing of personal items that were left in the rental unit, for which he was paid \$100.00. He stated that he was paid an additional \$50.00 for completing other minor repairs to the rental unit.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not comply with section 45 of the *Act* when he ended the fixed term tenancy on a date that was earlier than the date specified on their fixed term tenancy agreement. Although the Tenant made some effort to find new tenants, the evidence shows that he was not successful in his attempts to sublet the rental unit and I find that the Landlord experienced a financial loss because this fixed term tenancy ended early. Specifically, I find that the Landlord experienced a loss of revenue, in the amount of \$1,800.00 per month, for March and April of 2009 when the rental unit was vacant, and I find that the Tenant must compensate the Landlord for that loss, in the amount of \$3,600.00. I also find that the Landlord experienced a loss of revenue, in the amount of \$100.00 per month, for May, June, July, and August of 2009, when the rental unit generated less rent than it would have generated if the fixed term tenancy had continued until the scheduled end date, and I find that the Tenant must compensate the Landlord for that loss, in the amount of \$400.00.

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I find that the Landlord incurred advertising expenses as a result of the Tenant's failure to end this tenancy in accordance with section 45 of the *Act*. I therefore find that the Tenant must compensate the Landlord for these expenses, in the amount of \$281.70. Specifically, I find that the Tenant must compensate the Landlord for the billing period between March 11, 2009 and March 17, 2009 in the amount of \$97.40 and the billing period between April 16, 2009 and April 29, 2009 in the amount of \$184.30

Based on the evidence provided by the Landlord and the contents of the letter dated February 25, 2009, I find that the Tenant still owes \$20.00 in rent from February of 2009.

Based on the evidence provided by the Landlord and the contents of the letter dated February 25, 2009, I find that the Tenant owes \$176.12 in utilities for the billing period prior to December 16, 2008. I also find that the Tenant owes 87.5% of the utility bill for the period between December 16, 2008 and April 15, 2009, as the Tenant occupied the rental unit for seventy-three days of the eighty-eight day billing period. 87.5% of the utility bill of \$177.56 is \$155.36. In total, I find that the Tenant owes \$331.48 in utilities.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not comply with section 37(2) of the *Act* when he did not remove all of his personal property from the rental unit at the end of the tenancy. I find that the Tenant must compensate the Landlord for expenses he incurred as a result of the Tenant's non-compliance with the *Act*. Specifically, I find that the Tenant must compensate the Landlord for the dump fees, in the amount of \$28.25, and the labour for disposing of the property, in the amount of \$100.00.

I dismiss the Landlord's claim for labour costs, in the amount of \$50.00, for completing minor repairs to the rental unit, as the Landlord did not indicate its intent to claim for minor repairs in the Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$4,811.43, which is comprised of \$4,000.00 in loss of revenue; \$281.70 in advertising costs; \$20.00 in unpaid rent; \$331.48 in unpaid utilities; \$128.25 for cleaning the rental unit; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the Tenant's security deposit plus interest, in the amount of \$904.50, in partial satisfaction of this claim.



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Based on these determinations I grant the Landlord a monetary Order for the amount \$3,906.93. 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.

I dismiss the Tenant's claim for compensation for the cost of filing his Application for Dispute Resolution, as he failed to attend in support of his application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2009.

Dispute Resolution Officer