



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, (MNSD), FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income and to recover the filing fee for this proceeding. The Landlord did not check off the box on her application to keep the Tenant's security deposit, however she has alluded to that in the "Details of Dispute" section of her application. Consequently, I find that the Tenant has had notice that the Landlord intended to make a claim against the security deposit and I allowed the Landlord to amend her application accordingly.

Issues(s) to be Decided

1. Is the Landlord entitled to a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on November 1, 2008 and ended on March 31, 2009. Rent was \$700.00 per month. The Tenant paid a security deposit of \$350.00 on October 31, 2008.

The Landlord claims that the Tenant gave her verbal notice on March 12, 2009 that she was ending the tenancy on April 1, 2009 but did not give written notice until March 28, 2009. The Landlord said she was able to re-rent the rental unit as of April 22, 2009 and received one-half of that month's rent. The Landlord also claims that the Tenant was responsible for hydro and that she incurred approximately \$33.00 for hydro for one-half of April, 2009.

The Tenant claims that she was unable to contact the Landlord to give her notice until after the Landlord returned from Mexico. The Tenant said the Landlord advised her that she had another tenant lined up for April so she didn't have to worry about giving her a written notice. The Tenant claimed however, that the prospective tenant backed out and the Landlord later asked her for a written notice.

The Landlord denied that she told the Tenant that she didn't have to provide a written notice. The Landlord also claimed that the Tenant said the new place she intended to

move to had just been advertised for rent after the beginning of March 2009. The Landlord admitted that other tenants had also moved out at the end of March but that they put their rent cheque for March 2009 and their written notice through her mail slot. The Tenant however, only left a cheque.

Analysis

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give one clear months notice. Section 52 of the Act says that the notice must be in writing. If a Tenant fails to give one month written notice, they may be responsible for a loss of rental income the Landlord incurs as a result.

Given the contradictory evidence of the Parties, I find that there is insufficient evidence to conclude that the Landlord told the Tenant that she did not have to give written notice. Even though the Landlord did not return from holidays until March 7, 2009, I find that the Tenant could have left a written notice with her rent cheque for March 2009 in the Landlord's mail slot at the end of February 2009 and it would have been sufficient to take effect on March 31, 2009, however the Tenant did not do so. Consequently, I conclude that the Tenant did not decide to move until after the beginning of March and the earliest her notice could take effect was April 30, 2009.

As a result, I find that the Landlord is entitled to a loss of rental income for April 2009 in the amount of \$350.00. In the absence of any Fortis BC bill, I find that there is insufficient evidence to support the Landlord's claim for unpaid utilities and that part of her claim is dismissed. As the Landlord has been successful in this matter, she is entitled to recover her \$50.00 filing fee. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$350.00
Filing fee:	\$50.00
Subtotal:	\$400.00
Less: Security deposit:	(\$350.00)
Accrued interest:	<u>(\$0.89)</u>
Balance owing:	\$49.11



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Conclusion

A monetary order in the amount of **\$49.11** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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 03, 2009.

Dispute Resolution Officer