



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the tenant seeking the return of double his security deposit plus interest and compensation for loss due to a breach of the tenancy agreement or *Act* by the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

As a preliminary issue I received agreement from both parties to have the tenancy agreement sent in after the hearing was completed. I received a copy of the tenancy agreement by fax from the landlord on August 12, 2009 and I have considered the tenancy agreement in making a finding on this dispute.

Issues(s) to be Decided

Was the tenant charged a penalty for ending this tenancy early?

Is the tenant entitled to the return of double his security deposit or some portion of the security deposit?

Background and Evidence

According to the written tenancy agreement, which the parties entered into in May 26, 2008, this tenancy began on June 1, 2008 for the initial rent of \$1,800.00 to November 30, 2008 and then increasing to \$1,900.00 per month. The tenancy was for a fixed term ending on May 31, 2009 at which point the tenant was to move out of the rental unit. The tenant paid a security deposit of \$900.00 on June 1, 2008.

The tenancy agreement included a number of terms regarding the consequences of the tenant terminating the tenancy early. Term 49 of the tenancy agreement reads:

The tenant is aware that they are responsible for the rents, utilities and all other costs for the entire period of the Lease. If the tenant wishes to be released from

the Lease they will be responsible to pay for the following unit a replacement tenant approved by [landlord] is found.

[Reproduced as Written]

This term requires the tenant to be responsible for rent and utilities, for advertising costs at set places and set amounts, a management fee of \$50.00 per month, any potential insurance cost suffered by the landlord, credit check costs performed by the landlord and any other costs incurred.

The tenant gave notice to end the tenancy on March 16, 2009 and vacated the rental unit as of April 6, 2009. The tenant's notice suggests that the vacancy date would be between April 6 - 12th, 2009. However, the tenant paid the rent owed until May 31, 2009. The landlord was successful in finding a new tenant as of May 26, 2009. The tenant provided the landlord with \$600.00 for the cost of running advertisements to find a new occupant.

Move-in and move-out condition inspection reports were completed and at the move-out condition inspection the tenant, or an agent acting on the tenant's behalf, agreed to some deductions to the security deposit for cleaning, spot carpet cleaning and outstanding or pending water bill expenses.

On May 6, 2009 the landlord sent the tenant a letter indicating the deductions being made to the security deposit related to breaking the lease and to cover the agreed to expenses. The deductions were as follows:

Management fee (\$50.00 X 2)	\$100.00
Credit check charge	\$26.50
Cleaning	\$55.00
Water bill (Feb 21/09 to April 8/09)	\$63.37
Spot carpet cleaning	\$126.00
Sub total	\$1,349.04
<i>Credits to Tenant</i>	
Security deposit plus interest	\$907.89
Payment made by tenant for advertising	\$600.00
Refundable key deposits	\$100.00
Sub total	\$1,607.89

Balance owed to Tenant	\$258.85 (Landlord calculated \$257.85)
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The landlord also provided the tenant a further refund of \$367.74 which represented a credit of rent paid by the tenant for May 2009 since a new tenant was found as of May 26, 2009.

The tenant argued that the landlord has collected and charged him an unreasonable charge for ending the tenancy early. The tenant pointed out that he paid the rent to May 31, 2009 as required by the tenancy agreement and at that point the landlord would have been responsible for finding a new tenant, or for advertising, regardless. The tenant submitted that it was unreasonable and unfair that he paid all the rent and all the fees imposed by the landlord. The tenant also submitted that the charge of \$55.00 was not reasonable expense for cleaning the stove and the tenant felt that half that cost would be more reasonable.

The landlord submitted that the tenant was responsible for all these charges and the rent pursuant to the tenancy agreement and that there was no merit to the tenant's application.

Analysis

I grant the tenant's application in part. I do not accept the arguments of the landlord that the tenant is responsible for both rent and costs to advertise because I find that the tenant completed the contract and any advertising costs experienced by the landlord were costs the landlord would have experienced regardless. The tenancy agreement required that the tenant move as of May 31, 2009. The tenant paid the rent owed for April and May of 2009 and as a result the tenant completed the contract. The landlord had no grounds to charge the tenant for the costs of advertising or any other charge as described in clause 49 of the tenancy agreement.

As a result, I find that the tenant was only responsible of the sum agreed to respecting some additional cleaning at the rental unit for the sum of \$244.37. The tenant is entitled to the return of the remaining security deposit plus interest of \$663.52, the recovery of the \$600.00 paid to the landlord for advertising, the \$100.00 for key deposits and recovery of the \$50.00 filling fee paid for this application.

Therefore, the tenant is entitled to the sum of \$1,413.52 less the sum of \$257.85 for the balance of **\$1,155.67**. In addition the tenant was entitled to the return of the sum of



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\$367.74 of the rent paid for May 2009 when the landlord re-rented the suite as of May 26, 2009.

Conclusion

I find that the landlord overcharged the tenant for costs to re-rent the apartment after accepting full rent owed to the end of the fixed term tenancy agreement which ended as of May 31, 2009.

I find that the landlord is to reimburse the tenant the sum of **\$1,155.67** and have issued a monetary Order for this sum to the tenant. This Order may be filed with the Province of British Columbia Small Claims Court 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: August 27, 2009.

Dispute Resolution Officer