



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for a monetary Order for money owed or compensation for damage or loss; 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Neither party raised any preliminary issues regarding service of documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for expenses incurred as a result of a premature end to a fixed term tenancy agreement; to keep all or part of the security deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy that was scheduled to begin on May 01, 2009 and end on April 30, 2010; that the Tenant was required to pay monthly rent of \$1,580.00 on the first day of each month; and that the Tenant paid a security deposit of \$790.00 on April 07, 2009. The tenancy agreement was signed by both parties on April 07, 2009.

The Landlord and the Tenant agree that the Tenant sent an email to the Landlord on April 13, 2009, in which he advised the Landlord that he did not wish to move into the rental unit. The parties agree that the Tenant did not move into the rental unit.

Residential Tenancy Branch
Ministry of Housing and Social Development

At the hearing the Tenant stated that he was unable to fulfill the terms of this tenancy agreement because his employer required him to leave the country for an extended period. The Tenant stated that he did not provide the Landlord with a forwarding address when he ended the tenancy, as he presumed the Landlord would know that he could contact him at his place of employment.

At the hearing the Landlord stated that after receiving notice that the Tenant would not be moving into the rental unit he immediately took steps to find another tenant. He stated that he contacted all the people who had previously viewed the rental unit but was unable to locate anyone in that group who was interested in entering into a tenancy. He stated that he subsequently advertised the rental unit on Craig's List and was able to locate a new tenant, who entered into a fixed term tenancy for one year.

The Landlord stated that the new tenant moved into the rental unit on May 04, 2009 and paid rent of \$1,350.00 for that month. He stated that he entered into a fixed term tenancy lease with the new tenant that required the new tenant to pay monthly rent of \$1,500.00. He stated that he had to accept reduced rent for the rental unit as \$1,580.00 was more than the rental market would bear at that time.

The Landlord is seeking compensation, in the amount of \$230.00, for the loss of revenue experienced during the month of May. \$230.00 represents the difference between what the current tenant paid in rent for May and the amount that the Landlord would have received from this Tenant if the fixed term tenancy had not ended prematurely.

The Landlord is also seeking compensation, in the amount of \$80.00 per month, for the loss of revenue he expects to experience during the other eleven months of the fixed term tenancy agreement. \$80.00 per month represents the difference between what the current monthly rent being paid for the rental unit and the monthly rent that the Landlord would have received from this Tenant if the fixed term tenancy had not ended prematurely.

The Tenant agreed that \$1,580.00 was more than the rental market would bear at the time the Landlord entered into a new fixed term tenancy agreement but he argued that it is not his fault that the rental market changed, and he should not be responsible for the loss of revenue the Landlord incurred as a result in the changing rental market. The Tenant argued that he should not be responsible for any loss of revenue the Landlord suffered because he gave him seventeen days notice of his intent to end the tenancy agreement, which the Tenant described as "ample".

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,580.00 on the first day of each month. I find that this fixed term tenancy was to begin on May 01, 2009 and to end on April 30, 2010.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenant must pay \$230.00 to the Landlord for the loss of revenue that the Landlord experienced in May of 2009; \$80.00 for the loss of revenue the Landlord experienced in June of 2009; \$80.00 for the loss of revenue the Landlord experienced in July of 2009; \$80.00 for the loss of revenue the Landlord experienced in August of 2009; \$80.00 for the loss of revenue the Landlord experienced in September of 2009; \$80.00 for the loss of revenue the Landlord experienced in October of 2009; \$80.00 for the loss of revenue the Landlord experienced in November of 2009; \$80.00 for the loss of revenue the Landlord experienced in December of 2009; \$80.00 for the loss of revenue the Landlord experienced in January of 2010; \$80.00 for the loss of revenue the Landlord experienced in February of 2010; \$80.00 for the loss of revenue the Landlord experienced in March of 2010; and \$80.00 for the loss of revenue the Landlord experienced in April of 2010, for a total of \$1,110.00.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of \$790.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,160.00, which is comprised of \$1,110.00 for loss of revenue and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit, in the amount of \$790.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$370.00. In the event that the Tenant does not comply with this Order, it may be served



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

on the Tenant, 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 14, 2009.

Dispute Resolution Officer