



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for compensation for loss of rental income, for damages to the rental unit and to recover a "lease break" fee and the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

The Landlord served the Tenant with the Application and Notice of Hearing by registered mail on June 12, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on June 18, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 27, 2008 and ended on June 5, 2009 when the Tenant moved out. Rent was \$780.00 per month. The Tenant paid a security deposit of \$390.00 at the beginning of the tenancy.

The Tenant gave the Landlord written notice on May 27, 2009 that he was ending the tenancy on June 1, 2009. The Landlord said she was unable to re-rent the rental unit again until July 1, 2009. The Landlord claimed that the Tenant was supposed to return to clean the kitchen appliances but failed to do so. The Landlord also claimed that the Tenant damaged a bedroom door and that it had to be replaced.

Analysis

The Landlord provided copies of 2 agreements. The first agreement was entered into with the Tenant at the beginning of the tenancy and indicated that it was a month to month tenancy. A second agreement was entered into on October 21, 2008 but does not specify what kind of tenancy it is, however it contains a term that, "\$150.00 will be withheld from Security Deposit if Tenancy is less than one (1) year."

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RTB Policy Guideline #4 (Liquidated Damages) states that a clause which provides for the automatic forfeiture of the security deposit in the even of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it was a genuine pre-estimate of damages. I find on a balance of probabilities that this was a month to month tenancy. In the circumstances, the only damages to which the Landlord would be entitled for ending the tenancy early would be a loss of rental income for one month. Consequently, I find that the term authorizing the Landlord to deduct \$150.00 from the Tenant's security deposit if he did not reside for a period of a year is a penalty clause and unenforceable.

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give one clear months notice they are ending the tenancy. Consequently, the earliest the Tenant could have ended the tenancy would have been June 30, 2009. Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a Landlord must try to re-rent a rental unit as soon as possible. The Landlord claimed that she was unable to re-rent the rental unit for June 2009 and as a result, I find that the Landlord is entitled to recover loss of rental income for June in the amount of \$780.00.

The Landlord provided a copy of a Condition Inspection Report. The report says that a move in condition inspection was done on September 27, 2008, however that portion of the report is blank and there are no signatures of the Parties indicating that they participated in one. The report also says that a move out inspection was done on June 2, 2009 and that the appliances were dirty and a bedroom door had 3 holes in it. The Tenant gave his written authorization to deduct \$100.00 to replace the bedroom door.

As the Landlord has been successful in this matter, she is entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 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:	\$780.00
Damage to door:	\$100.00
Cleaning expenses:	\$45.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$975.00
Less: Security deposit:	(\$390.00)
Accrued interest:	<u>(\$1.53)</u>
Balance owing:	\$583.47



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Conclusion

A monetary order in the amount of **\$583.47** 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: September 23, 2009.

Dispute Resolution Officer