

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit / pet damage deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy is from April 1, 2009 to March 31, 2010. Rent in the amount of \$1,250.00 is payable in advance on the first day of each month. A security deposit of \$625.00 was collected on March 15, 2009; a pet damage deposit of \$625.00 was also collected on March 15, 2009.

By way of e-mail dated on or about November 4, 2009, the tenants gave notice of their intent to vacate the unit at the end of that month. Subsequently, the tenants vacated the unit effective November 30, 2009. The tenants did not pay any rent for the month of November 2009.

Following the tenants' departure, the landlord advertised the unit for rent. However, thus far no new renters have been found. In the result, the landlord seeks compensation for unpaid rent for November 2009, in addition to loss of rental income for the two months of December 2009 and January 2010. The landlord acknowledged during the hearing that it was premature to apply for compensation for loss of rental

income for the final two months of the term of tenancy, which are February and March 2010.

During the hearing the landlord withdrew the aspect of the original application concerning compensation for costs incurred from advertising the unit for rent.

Analysis

Section 45 of the Act speaks to **Tenant's notice** and provides in part, as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, section 52 of the Act speaks to **Form and content of notice to end tenancy** and states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

There is no evidence that the tenants complied with the above statutory provisions in the manner in which they ended the tenancy.

In addition to the above provisions, Residential Tenancy Policy Guideline # 5 speaks to Duty to Minimize Loss, and provides in part, as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the *Residential Tenancy Act* or the *Manufactured Home Park Act* (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Efforts to minimize the loss must be “reasonable” in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

The full text of the Act, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Evidence submitted by the landlord includes copies of advertising receipts, as well as on-line advertisements for the unit.

Based on the documentary evidence and testimony of the parties, I find that the landlord has established entitlement to a monetary order in the amount of \$3,850.00. This is comprised of unpaid rent of \$1,250.00 for November 2009, \$2,500.00 combined as compensation for loss of rental income for December 2009 and January 2010, in addition to the \$100.00 filing fee.

I order that the landlord retain the security deposit of \$625.00, as well as the pet damage deposit of \$625.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,600.00 (\$3,850.00 - \$1,250.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$2,600.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 7, 2010

Dispute Resolution Officer