



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, 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 unpaid rent 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.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for loss of rental revenue for the period between September 15, 2009 and September 30, 2009, in the amount of \$330.00 and to recover the cost of filing the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant viewed the rental unit in August of 2009; that the parties agreed that the monthly rent for the rental unit would be \$660.00; and that the Tenant gave the Landlord a security deposit of \$330.00 on August 26, 2009.

The Agent for the Landlord stated that when she accepted the security deposit she understood that the parties had entered into a tenancy agreement and that she could not rent the unit to another party. She stated that she advised the Tenant that the current occupants were scheduled to vacate the rental unit on September 30, 2009 but that they would leave by September 15, 2009 if the Tenant wished to move in on September 15, 2009. She stated that the Tenant advised her that he would like to begin the tenancy on September 15, 2009 so she advised the occupants that they could vacate on that date. She stated that on September 01, 2009 the Tenant telephoned her and advised her that he did not wish to move into the rental unit.

The Tenant stated that he did not enter into a written or a verbal tenancy agreement with the Landlord. He stated that he gave the Landlord the security deposit as a “show of interest”, although he acknowledged that he understood this to mean that the Landlord could not rent the unit to someone else. He stated that after paying the security deposit he changed his mind and that on September 01, 2009 he verbally advised the agent for the Landlord that he did not wish to move into the rental unit.

The Agent for the Landlord and the Tenant agree that the Landlord returned one-half of the Tenant’s security deposit to the Tenant on September 01, 2009; that the Tenant gave the Landlord authorization to retain the other one-half of the security deposit as compensation for the revenue the Landlord expected to lose as a result of the Tenant’s decision not to move into the rental unit; that the Agent for the Landlord advised the Tenant that she would return the second half of the security deposit if she was able to rent the rental unit for September 15, 2009; and that she did return the second half of the security deposit on September 20, 2009. The Agent for the Landlord stated that she returned the second half of the security deposit because new occupants did move into the rental unit on September 06, 2009.

The Landlord is seeking compensation, in the amount of \$330.00, for loss of revenue. The Agent for the Landlord stated that the previous occupants of the rental unit were obligated to remain in the rental unit until September 30, 2009; that she advised the previous occupants that they could vacate the rental unit on September 15, 2009 after the Tenant advised her that he would move into the rental unit on that date; and that the previous occupants did vacate the rental unit on September 15, 2009.

The Agent for the Landlord stated that she had also entered into a tenancy agreement with other occupants for rental unit #17, which is located in the same residential complex. She stated that when the other occupants became aware that this rental unit was available they asked if they could move into unit #1 instead of unit #17. She stated that rental unit #17 remained vacant until December 01, 2009.

The Landlord is seeking compensation, in the amount of \$330.00, for loss of revenue. The Agent for the Landlord argued that the Landlord would have collected rent for rental unit #1 for the period between September 15, 2009 and September 30, 2009 from the Tenant in addition to rent for rental unit #17 if the Tenant had not ended the tenancy prematurely. She contends that the Tenant’s actions resulted in a loss of revenue for unit #17, even though they did not result in a loss of revenue for unit #1.

The Tenant argued that he is only responsible for revenue that was lost in relation to rental unit #1, for which the Landlord did not experience a loss of revenue.

Analysis

The *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use

of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that these parties entered into an oral tenancy agreement when the Tenant offered, and the Landlord accepted, the security deposit of \$330.00 on August 26, 2009. In these circumstances, I find that both parties understood that this payment entitled the Tenant to possession of the rental unit and that this understanding clearly implies that the parties entered into a tenancy agreement. I find that the parties agreed that the monthly rent would be \$660.00.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. This section required both parties to end this tenancy in accordance with the legislation.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. In these circumstances, the earliest date that the Tenant could have ended this tenancy in accordance with section 45 of the *Act*, was on October 15, 2009, providing he gave the Landlord written notice of his intent to vacate the rental unit prior to September 15, 2009.

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 section 45 of the *Act*, pursuant to section 67 of the *Act*. In my view the Landlord did experience a loss of revenue for the period between September 15, 2009 and October 15, 2009. Although the Landlord did receive rental income from rental unit #1, it lost rental income from unit #17 during the corresponding period, and I find that the Landlord would not have experienced that loss of revenue if the Tenant had moved into rental unit #1. On this basis, I find that the Landlord has established that it is entitled to compensation for loss of revenue, in the amount of \$330.00.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$380.00, which is comprised of \$330.00 in loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant the Landlord a monetary Order in that amount. In the event that the Tenant does not comply with this Order, it may be served 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: January 19, 2010.

Dispute Resolution Officer