



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with a copy of the Application and Notice of Hearing to a forwarding address provided by them by registered mail on October 28, 2009. Based on the evidence of the Landlord, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income?
2. Is the Landlord entitled to compensation for damages to the rental unit?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 30, 2008 as a fixed term tenancy which expired on September 30, 2009 and continued thereafter on a month to month basis. Rent was \$900.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$450.00 on or about October 1, 2008.

The Landlord said the Tenants gave him written notice on September 1, 2009 that they were ending the tenancy on September 30, 2009. The Landlord claimed that despite advertising the rental unit as soon as September 1, 2009 (by putting a sign outside the rental property), the unit could not be re-rented until November 1, 2009. Consequently, the Landlord argued that he lost rental income for the month of October, 2009 because the Tenants did not give him adequate notice.

The Landlord said he did not do a move out condition inspection report with the Tenants at the end of the tenancy. The Landlord claimed, however that the Tenants left a number of furnishings by a garage door on the rental property. The Landlord said the Tenants sent him a letter on October 16, 2009 asking him to dispose of those items and asking him to return their security deposit. The Landlord also claimed that the Tenants did not return a mailbox key and that the lock on it had to be replaced. The Landlord withdrew his claim for expenses to replace a refrigerator door.



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Analysis

In their written notice ending the tenancy, the Tenants mistakenly stated that they were giving the required “30 days notice.” Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give **one clear months notice**. In other words, if the Tenants wanted to end the tenancy on September 20, 2009, they had to give the Landlord their Notice no later than August 31, 2009. The earliest the Tenants’ notice dated September 1, 2009 could have taken effect would have been October 31, 2009.

However, the s. 7(2) of the Act also requires that a Landlord take reasonable steps to mitigate his damages by trying to re-rent the rental unit as soon as possible. The Landlord said the only steps he took (as is his usual practice) was to put a sign outside of the rental property. In the circumstances, I am not satisfied that the Landlord took reasonable steps to mitigate his damages as there was no evidence that his customary advertising practices were usually successful in obtaining new tenants within a reasonable amount of time. Consequently, I find that the Landlord is entitled to recover loss of rental income for one-half of October, 2009 in the amount of \$450.00.

Although the Tenants agreed to be responsible for the cost of removing furnishings they left on the rental property, I find that there is no evidence that the Landlord had them removed or incurred any expenses to have them removed. Consequently, this part of the Landlord’s claim is dismissed without leave to reapply.

The Landlord also claimed that the Tenants failed to return a mailbox key at the end of the tenancy and that as a result, he had to have the mailbox lock replaced. The Landlord provided a copy of an invoice for this expense which does not identify the mailbox in question. The Landlord admitted that he wrote the dispute address on the invoice after he received it. I also note that the mailbox lock in question was replaced on December 14, 2009 a full month and a half after the Landlord said new tenants took possession of the rental unit. In the circumstances, I find that the invoice for replacing the mailbox lock is unreliable and in the absence of any other evidence to corroborate the Landlord’s claim, it is dismissed without leave to reapply for lack of evidence.

As the Landlord has been only partially successful in this matter, I find that he is entitled to recover one-half of the filing fee for this proceeding or \$25.00. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants’ security deposit and accrued interest in partial payment of the loss of rental income award. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income	
for October 2009:	\$450.00
Filing Fee:	<u>\$25.00</u>



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Subtotal:	\$475.00
Less: Security deposit:	(\$450.00)
Accrued interest:	<u>(\$1.70)</u>
Balance owing:	\$23.30

Conclusion

A monetary order in the amount of **\$23.30** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: February 24, 2010.

Dispute Resolution Officer