

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. The landlord was present at the hearing and participated by way of her agent who acted as translator.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the tenant did not appear.

Issues to be decided

- Whether the landlord is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement signed by the parties on August 2, 2009, the fixed term of tenancy was from September 1, 2009 to September 30, 2010. Rent in the amount of \$1,400.00 was due in advance on the first day of each month, commencing on September 1, 2009.

On August 2, 2009, the landlord gave the tenant the keys to the unit, and between them the parties agreed that rent in the amount of \$665.00 would be collected at that same time for the period from August 15 to 31, 2009. Further, a security deposit of \$700.00 was collected on August 2, 2009.

By e-mail to the landlord dated August 10, 2009, a copy of which is not in evidence, the tenant ended the tenancy effective immediately. The landlord testified that the tenant did not thereafter return the keys to the unit. Subsequently, new renters were found for the unit effective September 1, 2009.

The landlord seeks to retain the full amount of rent paid in advance by the tenant for the period from August 15 to 31, 2009 (\$665.00). Additionally, the landlord seeks compensation as follows:

- \$235.00 – cost of changing locks on the unit
- \$100.00 – cost of advertising for new renters
- \$150.00 – administrative fee (agent / interpreter)
- \$50.00 – filing fee

Analysis

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

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.

Based on the documentary evidence and undisputed testimony of the landlord, I find that notice given by the tenant to end the tenancy does not comply with the above statutory provisions. Accordingly, while the landlord mitigated the potential loss of rental

income commencing from September 1, 2009, I find that the landlord is entitled to retain rent paid in the amount of \$665.00 for the period from August 15 to 31, 2009.

I further find that the landlord has established entitlement to recover the costs arising from changing the locks on the unit (\$235.00), and advertising for new renters (\$100.00). As the landlord has mainly succeeded in this application, I find that she is also entitled to recover the filing fee (\$50.00).

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Further, the subject residential tenancy agreement contains no provision for the assessment of an "administrative fee" against the tenant. Accordingly, the landlord's claim for an administrative fee of \$150.00 is hereby dismissed.

As for the monetary order, I find that the landlord has established a claim of \$385.00 (\$235.00 + \$100.00 + \$50.00), and I therefore order that the landlord retain this amount from the security deposit.

The tenant is entitled to repayment of the balance of \$315.00 (\$700.00 - \$385.00). However, as the landlord has already reimbursed the tenant in the amount of \$185.00 by way of money order dated September 4, 2009, I order the landlord to reimburse the tenant for the remaining balance of \$130.00 (\$315.00 - \$185.00).

Conclusion

Following from the above, I order the landlord to withhold \$385.00 from the tenant's security deposit, and to return FORTHWITH to the tenant the amount of \$130.00.

DATE: April 13, 2010

Dispute Resolution Officer