



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for damages or loss, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the landlord requested amendment to the Application to include loss of January 2010 rent revenue and actual advertising costs in the sum of \$573.76. I found that the monetary amount claimed was increased by \$3,073.76 and the Application was amended.

The landlord submitted late evidence to the Residential Tenancy Branch on April 8, 2010. This evidence was not served to the tenants; therefore, it was not considered. The landlord was at liberty to provide oral testimony in relation to this evidence. The remaining evidence consisted of a tenant ledger that was served to only one tenant, and a copy of the tenancy agreement, which the parties confirmed they were familiar with.

Issue(s) to be Decided

Is the landlord entitled to retain the deposit paid?

Is the landlord entitled to a monetary Order for damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

This one-year fixed-term tenancy commenced on June 1, 2009. Rent was \$2,500.00 due on the first day of the month. A security deposit in the sum of \$1,250.00 and pet deposit of \$150.00 were paid on May 11, 2009.

The landlord is claiming loss of rent revenue for December 2009 and January 2010 in the sum of \$5,000.00, plus advertising costs in the sum of \$573.76.

The parties agreed that early in November 2009, the landlord issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants had given the landlord a set of post-dated cheques and the cheque for November had not been processed. Within a day or so of receipt of the Notice the tenant located a new rental unit and paid a deposit.

The tenant and landlord then had a telephone conversation during which the landlord told the tenant that if the rent were paid the tenancy could continue. The tenant told the landlord she could no longer afford the rent and she agreed to submit written notice ending her tenancy. The landlord offered to assist in locating new tenants.

When paying her November rent the tenant was told by the landlord's office staff member that her post-dated cheque for November rent had been located. This was confirmed by the landlord. The tenant moved out at the end of November.

The landlord is claiming the loss of rent revenue that occurred as a result of the tenant having moved out of the rental unit, in breach of section 45 of the Act.

At the end of the tenancy the tenants provided the landlord with the male tenant's written forwarding address. Within fifteen days of the end of the tenancy the landlord applied for dispute resolution, claiming against the deposit.

The male tenant moved out of the rental unit in early November.

Analysis

I must first consider the manner in which this tenancy ended. The parties presented two methods by which this tenancy ended; the first as the result of a Notice to End Tenancy issued by the landlord and, the second, the result of a written notice given to the landlord by the tenant.

The tenant received the Notice to End Tenancy in early November 2009 and immediately located a new rental unit and paid the required deposit. It was not until after she had found new accommodation that the tenant and landlord discussed the reasons the Notice had been issued.

Based upon the testimony and acknowledgement of the landlord, it is clear that the Notice to End Tenancy was issued based on an error of the landlord and that the post-dated November rent cheque had been in the possession of the landlord.

Residential Tenancy Branch policy suggests that a Notice ending tenancy may not be unilaterally withdrawn by a landlord. The tenant may well have wanted to end the tenancy for other reasons, but once given the Notice, the tenant was within her rights to react to that Notice and locate other accommodation. I find that the subsequent written notice given by the tenant to the landlord did not alter the fact that the landlord had first given the tenant Notice, which resulted in the tenant locating a new rental unit.

It would not be reasonable for a landlord to give a Notice compelling a tenant to find other accommodation, and to then withdraw the Notice without mutual consent. If that were to have occurred in this case, the tenant would have been faced with being a signatory to 2 different tenancy agreements. The landlord issued the Notice in good faith, but failed to attempt any mitigation, by first talking with the tenant and at least attempting to secure a replacement cheque for November's rent. Instead, the tenant was immediately issued a Notice ending her tenancy and she accepted this Notice.

Therefore, based on the testimony of both parties, I find that this tenancy ended as a result of the Notice to End Tenancy given by the landlord to the tenant in early November and that the landlord's claim for compensation is dismissed.

In relation to the deposits paid by the tenants, I find that the landlord applied for dispute resolution claiming against the deposits, pursuant to section 38 of the Act. Therefore, as the landlord's claim against the deposit does not have merit, I find that the deposits in the sum of \$1,400.00 must be returned forthwith to the tenants.

As the landlord's application does not have merit, and I find that the landlord is not entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord's Application is dismissed.

I find, pursuant to section 38 of the Act, that the landlord must return the deposits paid by the tenants in the sum of \$1,400.00.

Based on these determinations I grant the tenant's a monetary Order in the sum of \$1,400.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: April 15, 2010.

Dispute Resolution Officer