

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by 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 / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite service on the tenant by way of registered mail with the application for dispute resolution and notice of hearing at a forwarding address provided by her, 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

Responding to the landlord's advertisement, the tenant viewed the rental unit on or about March 20, 2010. Monthly rent was \$950.00 and an additional \$90.00 per month was payable for utilities. The total amount of \$1,040.00 was therefore payable in advance on the first day of each month.

After expressing her interest in the unit, the tenant undertook to return to the site with a security deposit of \$520.00. However, when she returned a day or so later she paid the landlord \$475.00, and said she would later pay the balance of \$45.00.

Thereafter, the tenant returned to the unit on March 29, 2010 while the landlord was finishing up some painting. The tenant indicated that she was prepared to pay the balance of \$45.00 and wanted the key to the unit. However, the landlord stated that he still required her to produce some photo identification and reminded her that possession

of the unit was still a couple of days off. The landlord testified that the tenant became upset, stated that she no longer wanted to rent the unit and asked for the return of her \$475.00 security deposit. The landlord subsequently made application for dispute resolution, seeking retention of the security deposit, compensation for loss of rental income, compensation for the cost of advertising again for new renters, and recovery of the filing fee. The landlord testified that new renters were found effective May 1, 2010.

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 12 of the Act speaks to **Tenancy agreements include the standard terms**, and provides as follows:

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement**, as provides:

16 The rights and obligations of a landlord and 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.

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

45(1) A tenant may end a periodic 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, and

(b) 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.

Residential Tenancy Policy Guideline # 3 speaks to “Claims for Rent and Damages for Loss of Rent.” In short, if a tenant fails to provide proper notice to end the tenancy, the landlord may be compensated “for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.”

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the parties entered into a tenancy agreement to be effective from April 1, 2010. I also find that as the tenant’s notice to end tenancy did not comply with the above statutory provisions, the landlord has established entitlement to compensation for loss of rental income for April 2010 in the amount of \$950.00.

Based on the affirmed / undisputed testimony of the landlord, I also find he is entitled to advertising costs in the total amount shown in his application which is \$140.00.

As the landlord has succeeded in this application, I further find that he is entitled to recover the \$50.00 filing fee. The total entitlement is therefore \$1,140.00 (\$950.00 + \$140.00 + \$50.00).

Residential Tenancy Policy Guideline # 17 addresses “Security Deposit and Set off,” and provides in part:

The [Act] provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord...

I order that the landlord retain the security deposit of \$475.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$665.00 (\$1,140.00 - \$475.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$665.00**. This order may be served on the tenant, and should it be necessary, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 3, 2010

Dispute Resolution Officer