



Dispute Resolution Services

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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 compensation for damages or loss under the Act, to retain all or part of the security and pet deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

On April 23, 2010, the tenant emailed her forwarding address to the landlord. The email indicated that the address was temporary. The landlord provided affirmed testimony that on May 4, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number and a copy of a receipt was provided as evidence of service. The mail was returned to the landlord marked as "moved or unknown."

From the time the landlord was given the forwarding address in writing and the time service was deemed completed, sixteen days had passed. I found it was a reasonable expectation that the landlord could use the forwarding address supplied by the tenant for use during the next 3 to 4 weeks, and that, pursuant to section 71(2)(b), that the tenant was sufficiently served with Notice of this hearing.

Issue(s) to be Decided

Is the landlord entitled to retain the deposits paid in compensation for damage or loss under the act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord submitted a copy of a one year fixed-term tenancy agreement signed by the parties on February 5, 2010. The tenancy commenced on February 26, 2010 and was to end on February 28, 2011, at which time the term could convert to a month-to-

month tenancy. On February 5, 2010, the tenant paid pet and damage deposits in the sum of \$362.50 each. Rent was \$725.00 per month.

On March 29, 2010, the tenant told the landlord she was moving out and on April 9, 2010, the landlord wrote the tenant telling her that she was breaching the lease. The tenant moved out on April 20, 2010 and failed to attend the condition inspection that had been set for 9 a.m. on April 20, 2010. Copies of emails between the tenant and landlord confirming this inspection were submitted as evidence. The tenant did not attend the inspection and had left the keys in the rental unit.

A new tenant was found for June 1, 2010; the landlord is claiming loss of revenue for May, 2010 in the sum of \$725.00.

Analysis

I find that the landlord applied claiming against the deposit within fifteen days of having received the forwarding address in writing.

In the absence of evidence to the contrary, I find that the tenant breached the terms of the fixed term tenancy agreement and that the landlord is entitled to compensation for loss of May, 2010 rent revenue in the sum of \$725.00.

As the tenant failed to attend the scheduled move-out condition inspection, I find that the landlord is entitled to retain the deposits paid, in satisfaction of the loss of rent revenue for the month of May, 2010. The landlord mitigated their loss by locating new tenants for June 1, 2010; thus avoiding a claim beyond one month's loss of revenue.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposits in the amount of \$725.00, in satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$775.00, which is comprised of \$725.00 in loss of May, 2010 rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security and pet deposits, in the amount of \$725.00, in satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$50.00. 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: September 13, 2010.

Dispute Resolution Officer