



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Landlord's application to retain a portion of the security deposit in satisfaction of his monetary claim for compensation for loss of rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of rent for the period of April 15, 2010 to April 28, 2010?

Background and Evidence

On March 11, 2010, the Tenant viewed the rental unit, signed a month-to-month tenancy agreement with the Landlord and paid a security deposit in the amount of \$625.00. Monthly rent was \$1,250.00. The Tenant was to move into the rental unit on April 15, 2010.

The Tenant testified that on March 24, 2010, she went back to the rental unit and changed her mind about renting because there were cheaper apartments in the area and the rental unit was in a noisy building. The Tenant sent an e-mail to the Landlord asking if they could mutually end the tenancy and the Landlord agreed.

The Tenant testified that she immediately placed an advertisement in an attempt to help the Landlord re-rent the suite. She testified that she had several potential renters lined

up, but that the Landlord had used the suite as a bed and breakfast for \$200.00 per night until May 1, 2010, and therefore was not able to show the suite to potential renters until then. She stated that the Landlord had not suffered a loss because he had earned money from the rental unit as a bed and breakfast.

The Landlord testified that the Tenant told him she wanted to cancel the agreement because she didn't get a job she was hoping for and couldn't afford it. He stated that he had agreed to cancel the agreement but was not aware of what that meant. He stated that he believed he was still entitled to compensation because he could not re-rent the rental unit until April 28, 2010. The Landlord testified that April 11 or 12 was the last day that he used the rental unit as a bed and breakfast. The Landlord stated that he advertised the rental unit on Craig's List and could have rented it to others for April 15, 2010.

The Landlord seeks compensation in the amount of \$499.92 for loss of rent (April 15 to April 28, 2010 at \$41.66 per day).

Analysis

It is important to note that neither party provided any documentary evidence in support of their position. For example, there was no copy of the tenancy agreement; the e-mail agreeing to end the tenancy; copies of newspaper ads or Craig's List postings; or documents indicating when the rental unit was last used as a bed and breakfast.

This is the Landlord's Application and therefore the burden of proving the claim is on the Landlord. The Landlord must provide sufficient testimony and supporting documentation to prove his claim. Furthermore, in a claim for compensation for damage or loss, an applicant must show that he has done whatever is reasonable to minimize the loss.

I find that the Landlord has not provided sufficient supporting documentation to support his claim (i.e. evidence of when the rental unit was advertised, or evidence of when he

stopped using the rental unit as a bed and breakfast). Therefore, the Landlord has failed to prove that he attempted to mitigate his loss, or that he suffered a loss, and I dismiss the Landlord's application.

Having dismissed the Landlord's application to retain a portion of the security deposit, I order the Landlord to return the Tenant's security deposit and provide the Tenant with a Monetary Order in the amount of \$625.00. No interest has accrued on the security deposit.

Conclusion

The Landlord's application is dismissed.

I hereby provide the Tenant with a monetary order for \$625.00 against the Landlord. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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 08, 2010.
