



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, OPB, & FF

Introduction

This hearing dealt with an application by the landlord seeking monetary relief related to loss experienced when the tenant breached the fixed term tenancy.

The tenant did not appear. The landlord provided affirmed testimony that the tenant was served with notice of this application and hearing by registered mail to an address provided by the tenant. The landlord also provided copies of the registered mail receipt and tracking number confirming that the tenant received the documents.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

Issue(s) to be Decided

Did the tenant breach the tenancy agreement resulting in a monetary loss for the landlord?

Background and Evidence

The landlord and tenant entered into a fixed term tenancy beginning August 1, 2010 and ending effective January 31, 2011. The monthly rent was \$820.00 and the tenant paid a security deposit of \$410.00 at the start of the tenancy.

The tenant ended the tenancy early effective December 31, 2010 and completed a move out condition inspection with the landlord on December 16, 2010.

The landlord seeks the following costs due to the tenant's breach of the tenancy agreement:

- Cost to advertize for new tenant, \$136.95;

- Loss of difference in monthly rent by \$20.00 for 12 months for the sum of \$240.00; and
- Recovery of the \$50.00 filing fee paid for this application for Dispute Resolution.

The landlord stated that the tenant never did provide written notice to end the tenancy, but did provide a forwarding address during the move out inspection. The landlord stated that the tenant became upset when she was informed that the security deposit would not be returned due to her breach of the fixed term tenancy.

The landlord submits that the tenant should be responsible for their loss of \$20.00 a month rent for the entire 12 month tenancy with the new tenant.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss.

The landlord is seeking loss due to the tenant breaching the fixed term tenancy. The landlord provided evidence confirming that \$136.95 was spent on advertizing the rental unit and the landlord reduced the rent by \$20.00 per month. The landlord wants the tenant to reimburse them the rental difference of \$20.00 for the 12 month lease entered into by the new tenant for a total of \$240.00. However, the tenant's breach or accountability to the landlord's loss only extends to the end of the contract between the



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landlord and this tenant. The landlord's loss of \$20.00 per month is more reflective of the change in the rental market and is a loss the landlord would likely have experienced regardless of whether the tenant breached the tenancy. Therefore, the tenant is only responsible for the landlord's loss of rent of \$20.00 for 1 month.

I also accept that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenant. Therefore, I find that the landlord has established a total monetary claim for the sum of **\$206.95**. I Order that the landlord may deduct this sum from the tenant's security deposit of \$410.00 which the landlord still holds in trust.

I grant the tenant a monetary Order for the remaining \$203.05 of the tenant's security.

Conclusion

The landlord's application is granted. The landlord has established a total monetary claim in amount of \$206.95 and has been authorized to retain this sum from the tenant's security deposit.

The tenant has been issued a monetary Order for the remainder of the security deposit. This Order must be served upon the landlord and may be filed with the Province of British Columbia Small Claims 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: January 10, 2011.

Residential Tenancy Branch