



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; a monetary Order for damage to the rental unit and to keep all or part of the security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord acknowledged receiving the Tenant's evidence on January 09, 2010 and the male Landlord indicated that they are prepared to proceed with the hearing at this time, as they do not require additional time to consider the Tenant's evidence.

The Landlord submitted evidence and photographs to the Residential Tenancy Branch, which they acknowledge were not served on the Tenant. The Landlord and the Tenant agree that the only evidence that was served to the Tenant, with the exception of the Notice of Hearing and the Application for Dispute Resolution, was a copy of the Condition Inspection Report. This is the only evidence submitted by the Landlord that will be considered as evidence when determining this matter.

The Landlord and the Tenant agree that the Landlord served the Tenant's father with an amended Application for Dispute Resolution. The Tenant stated that he has not physically viewed the amended Application for Dispute Resolution, although it was explained to him by his father. The Tenant stated that he is prepared to proceed with the claims for compensation outlined on the Amended Application for Dispute Resolution, including the Landlord's application for loss of revenue from November of 2010, December of 2010, and January of 2011.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit, unpaid rent, loss of revenue, and costs associated to the premature end of this tenancy; whether the Landlord is entitled to retain the security

deposit paid by the Tenant; and whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement for a period that was to begin on June 01, 2010 and to continue until June 01, 2011. A copy of the tenancy agreement was submitted in evidence, which shows the Tenant was required to pay monthly rent of \$975.00 on the first day of each month. The parties agreed that the Tenant paid a security deposit of \$475.50.

The Landlord and the Tenant agree that on September 29, 2010 the Tenant provided the Landlord with written notice of his intent to vacate the rental unit on November 01, 2010 and that he vacated the rental unit on that date. The parties agreed that the Tenant provided the Landlord with his forwarding address, in writing, on November 16, 2010.

The Landlord and the Tenant agree that a Condition Inspection Report was initiated on May 30, 2010 and was completed on November 03, 2010. The Tenant signed the report at the beginning and the end of the tenancy to indicate that it fairly represented the condition of the rental unit at those times.

The Landlord and the Tenant agree that the Tenant paid \$200.00 in rent for September of 2010. The parties agree that the Tenant paid the remaining \$775.00 in rent for September by cheque and that he subsequently put a "stop payment" on that cheque. The parties agree the September rent of \$775.00 is still outstanding.

The Landlord and the Tenant agree that the Tenant paid \$400.00 in rent for October of 2010. The parties agree that October rent of \$575.00 is still outstanding.

The Landlord is claiming compensation, in the amount of \$7.00, for the fee charged to him as a result of the "stop payment". The Tenant agreed to compensate the Landlord the \$7.00 fee that was charged to the Landlord even though he was not served with documentation that shows this fee was charged.

The Landlord is seeking compensation, in the amount of \$2,925.00, in compensation for loss of revenue he experienced for the month of November of 2010, December of 2010, and January of 2011. The male Landlord stated that he placed an advertisement for the rental unit in the Okanagan News on October 21, 2010, which ran for two weeks and that he renewed that advertisement on November 17, 2010, which ran for another two weeks. He stated that he placed an advertisement for the rental unit in the Peachland View on November 01, 2010, which ran for one month and that he renewed that advertisement on December 03, 2010, which ran for another month. The male Landlord stated that he advertised the rental unit on a popular website on October 07, 2010, November 04, 2010, and December 31, 2010. The male Landlord stated that he advertised the rental unit on another popular website on November 12, 2010 and that

the advertisement is still on that website. The male Landlord stated that he advertised the rental unit on a bulletin board at a local grocery store.

The Tenant contends that the Landlord could have started advertising earlier and that the Landlord's inability to find new tenants may be because the rent for the rental unit was too high.

The Landlord is claiming compensation, in the amount of \$300.00, for the cost of advertising the rental unit. The male Landlord stated that he spent \$301.94, in advertising costs, although he acknowledged that he did not serve copies of those receipts to the Tenant. The Tenant agreed to compensate the Landlord the \$100.00 for advertising costs even though he was not served with documentation that shows the Landlord incurred advertising costs.

The Landlord is claiming compensation, in the amount of \$96.00, for the cost of cleaning the rental unit. The Landlord contends that the rental unit required cleaning at the end of the tenancy. The Tenant agreed that some additional cleaning was required at the end of the tenancy and he agrees that the Landlord is entitled to compensation in this amount.

The Landlord is claiming compensation, in the amount of \$32.00, for the cost of repairing the wall where the Tenant had mounted a television to the wall. The Tenant acknowledged that he had not had time to repair the wall where the television had been mounted. The male Landlord stated that he spent approximately two hours repairing the wall.

The Landlord is claiming compensation, in the amount of \$3,000.00, for the stress related to being without a tenant for three months and to the stress related to finding a new tenant.

The Landlord was advised that I would not be considering the claim for compensation for future advertising expenses, in the amount of \$900.00, and that the Landlord has the right to file another Application for Dispute Resolution if the Landlord experiences further losses as a result of this tenancy.

The Landlord was advised that I would not be considering this claim for compensation for future legal costs, in the amount of \$3,000.00, as I do not have authority to award compensation for legal fees arising out of a dispute resolution hearing.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement for a period that began on June 01, 2010 and was to continue until June 01, 2011, which required the Tenant to pay monthly rent of \$975.00 on the first day of each month, and that the tenancy ended on November 01, 2010.

Section 26 requires tenants to pay rent when rent is due. As the Tenant occupied the rental unit during the month of September and he only paid rent of \$200.00, I find that the Tenant still owes the Landlord \$775.00 in rent for September of 2010. As the Tenant occupied the rental unit during the month of October and he only paid rent of \$400.00, I find that the Tenant still owes the Landlord \$575.00 in rent for October of 2010.

As the Tenant agree to pay \$7.00 to the Landlord as compensation for banking fees incurred by the Landlord as a result of the "stop payment" the Tenant placed on his September rent cheque, I find that the Tenant must pay the Landlord \$7.00.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenant must pay \$2,925.00 in compensation for the revenue the Landlord lost as a result of this rental unit being vacant in November of 2010, December of 2010, and January of 2011. I find that the Landlord first advertised the rental unit on October 07, 2010 and that the Landlord continued to advertise in a variety of ways, which I find to be a reasonable effort to locate new tenants. I find that the Tenant submitted no evidence to corroborate his suspicion that the rent for the rental unit was excessive, although the Landlord may need to consider reducing the rent if the Landlord intends to seek further compensation for loss of revenue.

I find that the Tenant is also obligated to compensate the Landlord for the cost of advertising the rental unit, as I find these expenses are directly related to the premature end of this tenancy. In addition to establishing that the Tenant must compensate the Landlord for advertising costs, the Landlord must also accurately establish the cost of advertising. In these circumstances, I find that the Landlord failed to establish the true cost of advertising the rental unit.

Although the Landlord did submit receipts to the Residential Tenancy Branch that shows he incurred advertising costs, I cannot consider these receipts as they were not served on the Tenant. Without receipts that corroborate the Landlord's statement that he paid \$301.94 for advertising, I dismiss the Landlord's claim for compensation for that amount. As the Tenant agreed to pay the Landlord \$100.00 for advertising costs, I find that the Landlord is entitled to compensation for advertising in the amount of \$100.00.

As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$96.00 for cleaning the rental unit, I find that the Landlord is entitled to compensation for this amount.

On the basis of the undisputed evidence at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the wall where he had

mounted a television to the wall. I find this damage exceeds normal wear and tear. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In these circumstances, I find that the Landlord is entitled to compensation for the two hours he spent repairing the wall, at an hourly rate of \$16.00, which equates to \$32.00.

While I accept that finding a tenant takes time and effort, I do not find that a landlord is entitled to compensation for any stress that is related to finding a new tenant. I find that this is inherent to being a landlord and I do not find that a tenant is obligated to compensate a landlord for stresses related to an individual's decision to act as a landlord. On this basis, I dismiss the Landlord's claim for compensation for stress arising from the premature end of this tenancy.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$4,610.00, which is comprised of \$1,350.00 in unpaid rent, \$2,925.00 in compensation for loss of revenue, \$7.00 in bank fees, \$100.00 in advertising costs, \$32.00 in damages, \$96.00 in cleaning costs, and \$100.00 for filing this Application for Dispute Resolution.

I authorize the Landlord to retain the Tenant's security deposit of \$475.50 in partial satisfaction of this monetary claim. Based on these determinations I grant the Landlord a monetary Order for the amount \$4,134.50. 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: January 17, 2011.

Residential Tenancy Branch