

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent the tenant a copy of the dispute resolution hearing package by registered mail on October 20, 2010. As the tenant confirmed receiving this package, I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord reduced the amount of the monetary award she was seeking from the \$1,575.00 identified in her application by \$525.00 as she was able to re-rent the premises to another tenant as of November 15, 2010. The tenant spoke little English, so provided her evidence through her daughter, CS.

Issues(s) to be Decided

Is the landlord entitled to obtain a monetary award for losses from this tenancy? Is the landlord entitled to retain the tenant's security deposit in satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fees for this application?

Background and Evidence

The parties agreed that the tenant signed a Residential Tenancy Agreement (the Agreement) on September 27, 2010 for rental of this suite as of November 1, 2010. Monthly rent was set at \$1,050.00. Due to other circumstances in her life, the tenant changed her mind about renting the rental unit and sent a fax to the landlord on October 7, 2010 advising that she would not be able to move into this suite and requesting the return of her security deposit.

The landlord said that she advertised the suite's availability on two popular rental websites and placed advertisements in the Vancouver Province and the R Review newspapers. She said that she re-rented the rental unit as of November 15, 2010 for

the same monthly rent. She asked for a monetary award for the loss of one-half month's rent arising out of this tenancy.

The tenant said that the landlord told her that she had seven days to change her mind after she signed the Agreement. She said that she tried many times during those seven days to call the landlord to let her know that she would not be moving into the rental unit in November. However, she was unsuccessful in reaching the landlord and the landlord did not return her calls. She also testified that her sister, Witness RF, called the landlord on her behalf on October 2, 2010 and told the landlord that the tenant would not be moving into the rental unit. She said that the landlord told her sister that she was busy and would have to speak with her later about this matter.

The landlord said that she receives many calls from tenants and could not recall whether she spoke with Witness RF on or before October 2, 2010. She said that the first time she received anything directly from the tenant about this matter was when she received her October 7 fax advising that she would not be moving into the rental unit.

Analysis

Section 16 of the *Act* establishes that the rights and obligations of a landlord and a 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." Since this Agreement commenced on September 27, 2010, the tenant was required to provide written notice in accordance with section 52 of the *Act* in order to cancel the tenancy. Whether or not phone calls were placed to or left for the landlord, the *Act* requires written notice to end a tenancy. This written notice was not provided to the landlord until October 7, 2010, five days after the deadline established in the Agreement.

The Agreement entered into written evidence by the landlord does provide the tenant an opportunity to cancel the tenancy until 6:00 p.m. on the fifth day following the date of the application. Based on the facts presented in this case, the tenant had until 6:00 p.m. on October 2, 2010 to advise the landlord that she was not planning to continue with this tenancy agreement.

Even if oral notice were sufficient, which is not the case, neither the tenant nor Witness RF, provided convincing and credible evidence that there was any discussion with the landlord prior to 6:00 p.m. on October 2, 2010. Witness RF said that she placed a number of phone calls to the landlord starting on September 29th and continuing on October 1 and October 2. She clearly testified that she never spoke with the landlord but just left messages for her. When I asked her to clarify this statement, she repeated that she could never get in touch with the landlord. This varied with the testimony from

the tenant who had maintained that Witness RF had spoken with the landlord and told her that the tenant could not move into the rental unit. When the landlord questioned this inconsistency in their testimony, the tenant spoke with her sister in her language, at which time Witness RF revised her testimony to say that she did speak with the landlord on October 2. I attach little credibility to this change in Witness RF's testimony given the information provided by the tenant to her which prompted Witness RF's change in testimony. As outlined above, a telephone conversation could not end a tenancy.

Based on the evidence presented, I find that the landlord is entitled to a monetary award of one half month's rent from the tenant for the losses arising out of the tenant's failure to occupy these premises in November 2010. I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of this award. No interest is payable over this period. I allow the landlord to recover the filing fee for this application.

Conclusion

I issue a monetary award in the following terms which allows the landlord to retain the tenant's security deposit and to recover the filing fee for this application:

Item	Amount
One Half Month's Lost Rent November 2010	\$525.00
Less Security Deposit	-525.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$50.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.