



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term tenancy is from August 1, 2010 to July 31, 2011. Monthly rent was \$1,250.00 and a security deposit of \$625.00 was collected. A move-in condition inspection and report were completed on July 29, 2010.

On January 31, 2011, the tenant gave notice to end the tenancy effective February 28, 2011. Subsequently, the tenant vacated the unit on February 24, 2011, at which time a move-out condition inspection and report were completed.

After advertising, new renters were found for the unit effective April 20, 2011. Monthly rent agreed to for the new renters is \$1,200.00, or \$50.00 less per month than rent in the subject tenancy agreement.

Aspects of the landlord's claim not dispute are as follows:

\$300.00 - liquidated damages; \$100.00 - reversal of move-in bonus; \$15.00 - window cleaning; \$32.00 - unit cleaning; \$55.00 - drape cleaning; and \$65.00 - carpet cleaning.

Sub- total: \$567.00

The tenant disputes the aspect of the landlord's claim concerning loss of rental income, arguing that the landlord made insufficient efforts to re-rent the unit following the end of

his tenancy. However, the landlord provided evidence of newspaper advertisements, and stated that additional on-line advertising was undertaken on craigslist. Further, the parties agreed that a sign advertising vacancies is posted at the front of the building.

The landlord seeks compensation for loss of rental income totaling \$2,210.00, calculated as follows:

\$1,250.00: *March*

\$810.00: *April*

\$150.00 (3 x \$50.00) *May, June & July*

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony, I find that the tenant's method of ending the fixed term tenancy did not comply with the statutory provisions set out above. Further, on a balance of probabilities I find that the landlord undertook sufficiently to mitigate the loss of rental income following the end of tenancy. In the result, I find that the landlord has established entitlement to compensation for loss of rental income in the amount of \$2,210.00 as claimed.

As the landlord has succeeded in this application, I find that the landlord has established entitlement to recovery of the \$100.00 filing fee.

Following from all of the above I find that the landlord has established a claim of \$2,877.00 (\$567.00 + \$2,210.00 + \$100.00). I order that the landlord retain the security deposit of \$625.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,252.00 (\$2,877.00 - \$625.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,252.00**. Should it be necessary, this order may be served on the tenant, filed in the 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*.

DATE: June 15, 2011

Residential Tenancy Branch