



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of that amount.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on June 1, 2010 and was to expire on May 31, 2011 however it ended on or about March 15, 2011 when the Tenant moved out. Rent was \$1,150.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$575.00 at the beginning of the tenancy.

The Tenant gave the Landlord written notice on March 3, 2011 that he would be ending the tenancy on March 31, 2011 and he paid rent for that month as well as for April 2011. The Tenant said he did a move out inspection with an agent for the Landlord on April 30, 2011 and was told at that time that his security deposit would be sent to his forwarding address. The Tenant said he did not receive a copy of the completed condition inspection report and claimed that he was later told by an agent of the Landlord he could not receive a copy of the report because the Landlord had commenced these proceedings. The Tenant argued that he should not be responsible for a loss of rental income for May because part of the reason he moved out was because the Landlord took an unreasonable amount of time to repair a leak in his ceiling and then a further unreasonable amount of time to repair the water damage to ceiling. The Tenant admitted that he did not give the Landlord written notice that if he failed to address the leak earlier the Tenant would end his tenancy.

The Landlord said he started advertising the rental unit in Craigslist and on his own company website as of March 15, 2011 and did many showings but was unable to re-rent the rental unit until June 1, 2011.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. The only exception to this rule, is s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant ***has given written notice of the failure***, the tenant may end the tenancy without further notice to the Landlord.

I find that the Parties had a fixed term tenancy and that the Tenant gave written notice on March 3, 2011 that he wanted to end the tenancy as of March 31, 2011. Although the Tenant argued that part of the reason for ending the tenancy early was that the Landlord failed to make repairs in a timely manner, he admitted that he did not give the Landlord written notice that if he did not rectify those issues he would end the tenancy. Consequently, I find pursuant to s. 45(2) of the Act, that the earliest the Tenant's written notice to end the tenancy could have taken effect would have been May 31, 2011.

Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlord said he advertised the rental unit on a popular local, online publication and had many showings of the rental unit but was still unable to rent it for May, 2011. The Tenant did not dispute this but argued that he was told by an agent for the Landlord on April 30, 2011 that his security deposit would be returned to him which he believed meant that the Landlord was not making a claim for May 2011 rent. The Tenant said he did not get a copy of the move out condition inspection report but he believed there may have been something on it that would show this.

The Landlord claimed that the Tenant did receive a copy of the move out condition inspection report and said the Landlord never agreed that the Tenant could end the tenancy early or that the Landlord would not seek rent for May, 2011. In the absence of any reliable evidence that the Landlord agreed to end the tenancy on April 30, 2011, I find that the Landlord is entitled to recover loss of rental income for May 2011 in the amount of \$1,150.00. I also find pursuant to s. 72(1) of the Act that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee he paid for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$625.00.

I ORDER the Landlord pursuant to s. 62(3) of the Act to provide the Tenant with a copy of the move out condition inspection report completed on April 30, 2011 within 2 days of the date of this decision.

Conclusion

A Monetary Order in the amount of **\$625.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 16, 2011.

Residential Tenancy Branch