



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed March 4/11: MNR; MNSD; FF

Tenants' application filed April 4/11: MNSD; FF

Introduction

This matter was scheduled to hear cross applications. The Landlords seek a Monetary Order for loss of revenue for the month of March, 2011; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek return of the security deposit; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Are the Landlords entitled to compensation for loss of revenue for the month of March, 2011?
- Disposition of the security deposit and accrued interest.

Background and Evidence

This tenancy began on March 1, 2006 and ended on February 28, 2011. Monthly rent at the end of the tenancy was \$1,455.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 on March 1, 2006.

The Landlord HW gave the following testimony:

The Tenants moved out of the rental unit without giving the Landlord due notice to end the tenancy. The Landlords received an e-mail on or about February 9th, advising that the Tenants were moving out on February 28, 2011. The Landlords told the Tenants that they would try to re-rent the rental unit for March 1, 2011. The Landlords were not able to re-rent the rental unit for March 1, 2011, and seek a monetary award against the Tenants for loss of revenue for the month of March.

The Tenant WT gave the following testimony:

The Tenants gave the Landlords notification that they were ending the tenancy on February 9, 2011, via e-mail. The Tenant provided a copy of the e-mail in evidence. It was normal for the parties to correspond by e-mail and they received a reply on February 10, 2011, indicating that the Landlord received the Tenants' notice to end the tenancy.

The tenancy agreement contained a clause that the Tenants had to provide 60 days notice in order to end the tenancy. The Tenants position is that this was an invalid clause that does not comply with the Act and therefore was unenforceable.

The Landlord agreed to try to re-rent the rental unit for March 1, 2011, but did not make attempts to re-rent until February 21, 2011.

Analysis

Section 45(1) of the Act states:

45 (1) A tenant may end a periodic 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, and

(b) 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.

The clause in the tenancy agreement that required the Tenants to provide 60 days notice to end the tenancy is not in compliance with the Act. Parties may not contract outside the Act and where a clause is contrary to the provisions of the Act, the Act applies.

Section 52 of the Act requires a notice to end tenancy to be in writing; be signed by the party giving the notice; give the address of the rental unit; and state the effective date of the notice. The Tenants' e-mail of February 9, 2011, is not effective notice because it does not comply with Section 45(1) or Section 52 of the Act.

Pursuant to the provisions of Section 67 of the Act, I find that the Landlords suffered loss of revenue due to the Tenants' failing to provide one month's notice in writing, and that the Landlords are entitled to compensation from the Tenant in the amount of \$1,455.00 for that loss.

The Landlords have been successful in their claim, and are entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72(2)(b) of the Act, I allow the Landlords' application to apply the security deposit, together with accrued interest in the amount of \$24.19, towards partial satisfaction of their monetary award.

The Tenants' application is dismissed in its entirety.

The Landlords are hereby provided a Monetary Order against the Tenants, calculated as follows:

Loss of revenue for March, 2011

\$1,455.00

Recovery of filing fee	\$50.00
Less security deposit and accrued interest	<u><\$724.19></u>
Balance due to the Landlords after set-off	\$780.81

Conclusion

The Tenants' application is dismissed in its entirety.

I hereby provide the Landlords a Monetary Order in the amount of **\$780.81** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 22, 2011.

Residential Tenancy Branch