



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNSD; FF; O

Introduction

This is the Landlords' application for a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents to each of the Tenants, by registered mail, on December 24, 2010. The Landlord provided copies of the receipts and tracking numbers in evidence.

The Landlord testified that he mailed copies of his evidence package to each of the Tenants, by registered mail, on April 21, 2011. The Landlord provided copies of the receipts and tracking numbers in evidence.

The Tenants provided documentary evidence to the Residential Tenancy Branch on May 3, 2011. Evidence must be provided to the other party and to the Branch at least 5 clear days prior to the Hearing. I explained to the Tenant that I would not consider this late evidence and invited her to provide testimony with respect to its contents.

Issues to be Decided

- Is the Landlord entitled to keep the security deposit and apply it towards unpaid rent for the month of December, 2010?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. This was a fixed term tenancy, commencing August 1, 2010, and ending April 1, 2011. At the end of the term, the tenancy could continue on a month-to-month basis or for another fixed term. Monthly rent was \$1,450.00, due on the 1st day of each month. The Tenants paid a security deposit in the amount of \$725.00, together with a pet damage deposit in the amount of \$300.00, at the beginning of the tenancy.

On October 29, 2010, the Tenants sent an e-mail to the Landlords indicating that they intended to end the tenancy effective December 1, 2010. The Tenants moved out on November 30, 2010. They paid rent for the month of November, but no rent was paid afterwards.

The Tenant testified that she provided the Landlords with more than one month's notice and gave them the contact information for a prospective tenant. She stated that the Landlord did not intend to re-rent the rental unit because the Landlord was selling the rental property. Therefore the Tenants do not believe they owe any rent for the month of December, 2010.

The Landlord testified that they entered into a lease agreement with the Tenants because they intended to sell the property in the spring of 2011. They stated that this was communicated to the Tenants when they signed the tenancy agreement. The Landlord stated that it they could not re-rent the rental unit for December, 2010, because the prospective tenant did not complete a rental application and no tenants were interested in renting for a term of 4 months. The Landlord testified that the Tenants provided their forwarding address on December 15, 2010.

Analysis

Section 45(2) of the Act provides ways in which a Tenant can end a fixed term. Section 45(2) states:

Tenant's notice

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.

(emphasis added)

Section 45(4) requires the notice to comply with Section 52 of the Act. Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be **in writing** and must

(a) **be signed and dated** by the landlord or tenant giving the notice,

(b) **give the address of the rental unit**,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

(emphasis added)

I find that the Tenant did not provide the Landlord with effective notice to end the tenancy in accordance with the provisions of Section 52 of the Act. In any event, the earliest date the Tenants could have ended the tenancy, without a mutual agreement to end the tenancy, was April 1, 2011. However, the Landlords acknowledged receipt of the Tenant's e-mail on October 31, 2010. They were aware that the Tenants were ending the tenancy effective December 1, 2010. Section 7(2) of the Act requires landlords to do whatever is reasonable to minimize loss of revenue when a tenant is non-compliant with the Act. The Landlord did not provide any documentary evidence

(i.e. copies of advertisements, etc.) or verbal testimony of any efforts made to re-rent the rental unit. Therefore, I find that the Landlords have not provided sufficient evidence to support their claim for loss of revenue for the month of December and their application is dismissed.

I order the Landlords to return the security and pet damage deposits to the Tenants forthwith. No interest has accrued on the deposits.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of \$1,050.00, representing return of the security and pet damage deposits, for service upon the Landlords. 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.

ated: May 20, 2011.

Residential Tenancy Branch