

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 or utilities / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord's agent participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking numbers for the registered mailing. Further, the Canada Post website informs that the registered mail was "successfully delivered."

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 initial fixed term of tenancy was from October 1, 2010 to February 28, 2011. Monthly rent of \$529.00 was payable in advance on the first day of each month, and a security deposit of \$450.00 was collected. A move-in condition inspection report were completed on October 1, 2010. At the expiration of the above fixed term, a new fixed term tenancy agreement was entered into for the period from March 1, 2011 to July 31, 2011.

In light of the landlord's understanding that the tenant's partner was not a tenant in the second tenancy agreement, and presented with a rent cheque for April which bore the name of the tenant's partner, the landlord issued a 10 day notice to end tenancy for unpaid rent dated April 4, 2011. Subsequently, the tenant informed the landlord that she and her partner were back together again and that the rent cheque for April could therefore be cashed.

However, on April 8, 2011 the tenant gave verbal notice of her intent to end the tenancy effective April 15, 2011. A move-out condition inspection report were completed on April 15, 2011. Despite advertising on-line and in a local newspaper, the landlord was unable to find new renters until effective June 4, 2011.

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 date 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.

Aspects of the landlord's claim are as follows:

\$529.00: loss of rental income for May 2011

\$151.20: carpet cleaning

\$ 50.00: filing fee

Total: \$730.20

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant's method of ending the tenancy does not comply

with the above statutory provisions. I further find that the landlord undertook to mitigate the loss. Accordingly, I find that the landlord has established entitlement to the full amount claimed of \$730.20, as above. I order that the landlord retain the security deposit of \$450.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$280.20 (\$730.20 - \$450.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$280.20**. 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: August 15, 2011

Residential Tenancy Branch