

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / 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 "hearing package"), the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website confirms that the package was "successfully delivered."

During the hearing the landlord's agent withdrew all aspects of the original application with the exception of the application to retain the full security deposit, as an offset against the loss of 1 month's worth of rental income.

Issue to be decided

- Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 1, 2011. Monthly rent of \$1,000.00 was payable in advance on the first day of each month, and a security deposit of \$500.00 was collected.

On August 19, 2011 the tenant gave verbal notice of his intent to vacate the unit at the end of August 2011, and subsequently he did vacate the unit at that time.

The landlord received the tenant's forwarding address by way of another resident on September 18, 2011. Thereafter, on September 22, 2011 the landlord filed the application for dispute resolution.

Despite on-line advertising, the landlord was unable to find new renters until effective from October 1, 2011. In view of the tenant's inadequate notice to end the tenancy, and delay in the landlord's ability to find new renters, the landlord's original application

included an application for a monetary order as compensation for loss of rental income in the amount of \$1,000.00 for the month of September 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 The attention of the parties is drawn to particular sections of the Act as set out below.

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

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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**, and provides in part that in order to be effective, "a notice to end a tenancy must be in writing..."

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

7(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.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant's manner of ending the tenancy did not comply with the above statutory provisions. I also find that the landlord undertook to mitigate the loss of rental income for September 2011 by advertising for new renters in a timely fashion. Further, I find that the landlord applied to retain the security deposit within 15 days after being informed of the tenant's forwarding address.

Following from all of the above, I find that the landlord has established entitlement to loss of rental income for the month of September 2011 in the amount of \$1,000.00. Accordingly, I find that the landlord has established entitlement to retention of the full security deposit of \$500.00 as an offset to the loss of rental income. Pursuant to the landlord's withdrawal of other aspects of the original application, the landlord's retention of the tenant's security deposit reflects full and final settlement of the application.

Conclusion

I hereby order the landlord to retain the full security deposit of **\$500.00**.

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: December 8, 2011

Residential Tenancy Branch