



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made a monetary Order, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the forwarding address provided at the end of the tenancy, via registered mail, on October 12, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for lost revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on April 06, 2011; that the Tenant was required to pay monthly rent of \$450.00 on the first day of each month; and that the Tenant paid a security deposit, key deposit, and furniture deposit of \$400.00.

The Landlord stated that on September 15, 2011 the Tenant gave written notice of his intent to vacate on September 29, 2011, and that the Tenant did vacate on September 29, 2011.

The Landlord stated that on September 20, 2011 he began advertising the rental unit in a local newspaper and that he continued advertising on a weekly basis until he secured a new tenant for November 11, 2011. He is seeking compensation for lost revenue for the month of October which he contends arose from the late notice provided by the Tenant.

Analysis

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on September 29, 2011 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, August 31, 2011. As the Tenant did not give written notice to the Landlord until September 15, 2011, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was October 31, 2011.

I find that the late notice prevented the Landlord from entering into a tenancy agreement with new tenants until the Tenant vacated the rental or until the effective date of the Tenant's written notice to vacate. As the Tenant did not vacate the rental unit until September 29, 2011, I find that his actions interfered with the Landlord's ability to enter into a tenancy agreement with a new tenant for the month of October.

I find that the Landlord made reasonable efforts to find new tenants for October 01, 2011, although his efforts were hindered by the fact that he did not have legal possession of the rental unit until the Tenant vacated the rental unit on September 29, 2011 and he could not enter into a new tenancy agreement prior to having legal possession of the rental unit as the notice to end tenancy provided by the Tenant was not effective until October 31, 2011.

I find that the Tenant must compensate the Landlord for lost revenue experienced in October of 2011, pursuant to section 67 of the *Act*, as his failure to comply with section 45 of the *Act* resulted in a loss of rental revenue for that period.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$450.00, which is comprised of \$400.00 in lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2), I authorize the Landlord to retain the Tenant's deposits of \$400.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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*.

Dated: December 21, 2011.

Residential Tenancy Branch