



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for damage to the rental unit, unpaid rent, damage or loss, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on November 4, 2011, the male tenant signed accepting copies of the Application for Dispute Resolution and Notice of Hearing sent via registered mail to an address provided by the tenant at the end of the tenancy. The landlord referenced the Canada Post web site and established that the male tenant had signed accepting the registered mail.

Approximately 3 months ago the female tenant provided the landlord with her forwarding address and on November 11, 2011, the female tenant signed, accepting the registered mail which contained the Application for Dispute Resolution and Notice of Hearing. Again, the landlord checked the Canada Post web site which indicated the female tenant signed, accepting the mail.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Preliminary Matters

There was no claim before me in relation to damage to the rental unit.

The landlord claimed interest on unpaid rent; this was dismissed, as interest is not contemplated by the Act.

The landlord claimed costs for photocopying and registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced on October 1, 2009 and was to end on November 30, 2010; a copy of the tenancy agreement submitted as evidence indicated both tenants signed the agreement. Rent was \$1,300.00 due on the first day of each month, a deposit in the sum of \$650.00 was paid.

The female tenant vacated prior to the male tenant; her name was not removed from the tenancy agreement.

The male tenant responded to a September 21, 2010 email from the landlord, agreeing that he owed \$8,250.00 in unpaid rent and that he would be vacating the unit. The landlord acknowledged the tenant's plans and informed him that the tenant would be responsible for any loss of rent revenue to the end of the term; November 30, 2010. Copies of the emails were supplied as evidence.

The tenant failed to pay rent for February, March, April, July, August and September, 2010. The tenant did not pay \$450.00 of June, 2010 rent owed. The tenant repeatedly told the landlord he would have the payments. Rent arrears total \$8,250.00.

After the September 21, 2010 email the landlord began advertising on a popular web site. Initially he advertised at \$1,300.00 but quickly reduced the rent to \$1,200.00 as the market was soft and another comparable unit was available at a lower rent. The landlord located new occupants effective October 15, 2011 and had to negotiate a lower rent in the sum of \$1,150.00. The landlord is claiming the loss of one half October rent revenue; \$725.00 plus loss of November rent revenue in the sum of \$150.00.

Analysis

I find, in the absence of the tenants at this hearing, who were both served with Notice of the hearing, that the landlord is entitled to unpaid rent from February, 2010 to September, 2010, in the sum of \$8,250.00.

I find that the landlord attempted to mitigate the loss he has claimed by acknowledging the tenants intention to vacate and making efforts to locate new occupants as quickly as possible. I accept the testimony that the landlord felt an urgent need to re-rent the unit

at a rate that appeared to match competing units and find that the landlord is entitled to loss of November, 2010, rent revenue in the sum of \$150.00.

As new occupants did not take possession of the unit until October 15, 2010, and paid one half of \$1,150.00; I find that the landlord is entitled to loss of October, 2010 rent revenue in the sum of \$725.00; the difference between rent paid by the new occupants and the amount owed by the tenants as part of their fixed-term tenancy agreement.

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

The landlord will retain the deposit in partial satisfaction of the claim for compensation.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$9,225.00, which is comprised of unpaid rent, loss of rent revenue and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the \$650.00 deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for \$8,575.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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: January 19, 2012.

Residential Tenancy Branch