



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on November 15, 2011 seeking a monetary award for unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on November 17, 2011, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims for unpaid rent, loss off rent and filing fee, and authorization to retain the security deposit in set off against the balance owed.

Background, and Evidence

According to the landlord, this tenancy began on June 1, 2011 and ended on October 31, 2011. Rent was \$1,000 per month and the landlord holds a security deposit of \$500 paid at the beginning of the tenancy. The tenant paid only \$450 of the October rent by payment made on or about October 8, 2011.

During the hearing, the landlord gave evidence that the tenant did not give notice until October 18, 2011 and vacated the rental unit on October 31, 2011. The landlord stated that the tenant had not participated in the move-out condition inspection report despite having been offered opportunities in writing and verbally.

In addition, the landlord stated that the tenant had not provided her with a forwarding address. Therefore, the landlord served the tenant with the Notice of Hearing at his place of employment by registered mail and she stated that Canada Post tracking service confirmed that the tenant had received the hearing package.

The landlord stated that she had begun advertising in a local newspaper and on Craigslist immediately after the tenant gave notice but she was unable to find a new tenant for November 2011

Therefore, the landlord seeks a Monetary Order for the \$550 rent shortfall for October 2011, plus \$1,000 loss off rent for November due to late notice, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

Analysis

As authorized under section 71(2)(b) of the *Act*, I find that the registered mail service to the tenant's place of employment constitutes sufficient service for the purposes of the *Act* and that the tenant was served with the hearing package by November 22, 2011.

Section 45 of the *Act* provides that a tenant in a periodic tenancy may give a Notice to End Tenancy with an end date of at least one month from the next rent due date after service is given. Therefore, the tenant's notice given on October 18, 2011 would have an effective end date of November 30, 2011.

I further find that the landlord has acted reasonably to minimize her losses by advertising the rental unit as soon as she learned the tenant was leaving, and that because of the late notice, the tenant is responsible for the landlord's loss of rent for November 2011.

Section 26 of the *Act* provides that tenants must pay rent when it is due and section 67 of the *Act* authorizes the director's delegate to determine an amount owed for a breach of the legislation or rental agreement and to order the non-compliant part to pay that amount to the other.

Therefore, I find that the tenant owes the landlord both for the \$550 rent shortfall for October 2011 and the \$1,000 for loss of rent for November 2011.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

As authorized under section 72 of the *Act*, I hereby order that the landlord is entitled to retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for October 2011	\$550.00
Filing fee	<u>50.00</u>
Sub total	\$1,600.00
Less retained security deposit (No interest due)	<u>- 500.00</u>
TOTAL	\$1,100.00

Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,100.00 for service on the tenant.

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*.

I am sending the tenant's copy of this decision to the rental unit. In the event the tenant has not asked Canada Post to redirect his mail, I direct the landlord to serve the tenant with the extra copy of the decision in her package when she serves the Monetary Order.

Dated: February 06, 2012.

Residential Tenancy Branch