



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled 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 service by registered mail and by Xpresspost of 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 numbers for the registered mail and the Xpresspost.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the one year fixed term of tenancy is from January 1 to December 31, 2011. Monthly rent of \$895.00 is payable in advance on the first day of each month, and a security deposit of \$447.50 was collected. A move-in condition inspection and report were completed.

The tenant gave notice on September 30, 2011 to end the tenancy effective October 31, 2011. A move-out condition inspection and report were completed on October 31, 2011, and new tenants were found effective November 1, 2011. The landlord claims that the tenant objected to the assessment of liquidated damages as a result of his early termination of the fixed term of tenancy, and declined to sign the move-out condition inspection report.

As the tenant terminated the fixed term tenancy before the end date shown on the agreement, the landlord seeks to recover liquidated damages of \$300.00, as provided in clause 3(a)(i) of the tenancy agreement. Further the landlord seeks to recover carpet cleaning costs of \$84.00, in addition to the \$50.00 filing fee. The total claim, therefore, is \$434.00 (\$300.00 + \$84.00 + \$50.00).

The landlord has already applied the tenant's security deposit of \$447.50 against the above claim of \$434.00, and has reimbursed the tenant for the difference which is \$13.50 (\$447.50 - \$434.00).

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guideline, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

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

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 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.

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 fixed term tenancy did not comply with the above statutory provisions. Accordingly, I find that the landlord has established entitlement to recovery of liquidated damages of \$300.00 as provided in the tenancy agreement. Specifically, clause 3(a)(i) of the tenancy agreement reads as follows:

3(a)(i) To terminate this lease prior to the expiry date on the 31 day of Dec., 2011, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition the **tenant is required to**

pay \$300.00 as liquidated damages to cover administration costs – this is not a penalty.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I also find that the landlord has established entitlement to recover the \$84.00 cost of carpet cleaning and the \$50.00 cost of the filing fee. In summary, I find that the landlord has established entitlement to recovery of costs in the total amount of \$434.00, as set out above. I order that the landlord retain this amount from the security deposit of \$447.50, and pay the balance to the tenant of \$13.50 (\$447.50 - \$434.00).

Conclusion

As the landlord has already repaid the balance of the security deposit owed to the tenant, I find there is no requirement to issue a monetary order in favour of 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*.

Dated: February 02, 2012.

Residential Tenancy Branch