



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 scheduled in response to the landlord's application for compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of a portion of the security deposit / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite service by registered mail 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 number for the registered mail.

Issue(s) 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 entered into by the parties on July 9, 2011, the fixed term of tenancy is from August 13, 2011 to August 15, 2012. Monthly rent of \$2,600.00 is payable in advance on the first day of each month, and a security deposit of \$1,300.00 was collected.

By e-mail dated July 21, 2011, the tenant informed the landlord that he did not wish to proceed with the tenancy. Subsequently, the landlord was able to find a new renter effective August 25, 2012.

Under the circumstances, the parties were unable to reach agreement around the proper disposition of the security deposit. In the result, the tenant sought the return of his security deposit by filing an application for dispute resolution (file # 784012). In a decision dated December 13, 2011, the dispute resolution officer found that the tenant had not provided the landlord with his forwarding address, and the tenant's application was therefore dismissed with leave to reapply. Thereafter, the tenant provided the

landlord with his forwarding address in writing and on December 13, 2011 the landlord filed her application for dispute resolution, seeking to retain a portion of the security deposit for unpaid rent (loss of rental income). It appears, on the face of it, that the period of time at issue is the 12 day period from the start date of tenancy shown on the tenancy agreement which is August 13, 2011, and August 24, 2011, which is the day before the date when the new tenancy began. However, the landlord indicated that the unit had been advertised as available for rent from August 15, 2011, and she has limited her application to the 10 day period between August 15, 2011 and August 24, 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

Section 16 of the Act speaks to **Start of rights and obligations under tenancy agreement**, and provides:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant did not end the fixed term tenancy in accordance with the above statutory provisions. I further find that the landlord undertook to mitigate her loss in a timely fashion, which led to finding a new renter effective August 25, 2011.

Additionally, I find that the landlord filed an application for dispute resolution within 15 days after being informed by the tenant in writing of his forwarding address.

In the result, I find that the landlord has established entitlement to unpaid rent (loss of rental income), in the amount of \$838.70, which is calculated as follows:

$\$2,600.00$ (monthly rent) \div 31 (number of days in August) = $\$83.87$ (daily rent)

$\$83.87$ (daily rent) \times 10 (number of days at issue) = $\$838.70$ (rent entitlement)

As the landlord has succeeded in this application, I find that she has also established entitlement to recovery of the $\$50.00$ filing fee, bringing the landlord's total entitlement to $\$888.70$ ($\$838.70 + \50.00).

Conclusion

I order that the landlord retain $\$888.70$ from the security deposit, and I order that the landlord repay the balance of $\$411.30$ to the tenant ($\$1,300.00 - \888.70).

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 24, 2012.

Residential Tenancy Branch