



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with 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, and the Canada Post website informs that the package was "successfully delivered."

Issue(s) to be Decided

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

Background and Evidence

On November 9, 2011, the landlord received an application for tenancy from the tenant. Thereafter, pursuant to a written residential tenancy agreement, on November 11, 2011, the parties entered into a 9 month fixed term of tenancy shown to be effective from December 1, 2011 to August 31, 2011. (It is understood that the end date was intended to be shown as August 31, 2012.) Monthly rent of \$1,975.00 was payable in advance on the first day of each month. In the meantime, the tenant issued a cheque to the landlord for the security deposit in the amount of U.S. \$987.50.

Subsequently, the tenant contacted the landlord by telephone on November 21, 2011 to inform her that the security deposit cheque would be NSF. On November 24, 2011 the bank debited the landlord's account in the amount of \$1,056.82. The landlord attributed the amount of the debit to a calculation of the exchange rate, and did not identify any portion of it as a bank fee assessed against the landlord.

Thereafter, by e-mail dated November 25, 2011 the tenant informed the landlord that she would not be proceeding with the tenancy. Following this, the landlord was able to find a new renter effective December 15, 2011, with monthly rent unchanged from \$1,975.00. The landlord testified that she collected payment from the new tenant for one half month's rent for December 2011 in the amount of \$987.50.

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 12 of the Act addresses **Tenancy agreements include the standard terms**, and provides in part:

- 12 The standard terms are terms of every tenancy agreement
(b) whether or not the tenancy agreement is in writing.

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 speaks to the **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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant's manner of ending the tenancy did not comply with the above statutory provisions. I also find that the landlord mitigated her loss by undertaking in a timely way to find a new renter. In summary, I find that the landlord has established entitlement to compensation in the amount of \$975.50 for one half month's rent for December 2011, in addition to the \$50.00 filing fee.

During the hearing the landlord inquired about recovery of costs incurred for registered mail. In this regard, section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. An application to recover the costs of registered mail would, therefore, be dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,037.50** (\$987.50 + \$50.00). Should it be necessary, this order may be served on the tenant, filed in the 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: February 28, 2012.

Residential Tenancy Branch