



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on November 17, 2011 for:

1. An Order for return of the security deposit – Section 38.

The Landlord applied on November 14, 2011 for:

1. An Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation for loss;
3. An Order to keep all or part of the security deposit; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Act.

The Tenant failed to attend to present their claim. As the Landlord appeared and was ready to proceed on the Tenant’s claim, in the absence of the Tenant, I dismiss the Tenant’s application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions in relation to the Landlord’s application.

Preliminary Matter

The Landlord states that as the unit in question is part of a house that has been licensed by the City of Maple Ridge as an unclassified community care home, the Act does not apply.

Section 4 of the Act provides that the Act does not apply to living accommodation in a community care facility under the *Community Care and Assisted Living Act*. As the Landlord did not file any corroborating evidence that the unit is accommodation in a community care facility under the Community Care and Assisted Living Act, I find that the Landlord has not established on a balance of probabilities that the Act does not apply to the unit in question. Accordingly, the Act applies.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a room in a house began on June 1, 2011 and ended on October 30, 2011. Rent of \$550.00 was payable monthly on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$275.00. The Landlord owns the house but does not live in the unit and the Landlord's agent lives in the basement suite of the house.

The Landlord states that on October 6, 2011 the Tenant gave the Landlord written notice to end the tenancy on October 30, 2011. The Landlord states that initially, the other tenants in the house had referred new tenants but that these tenants did not turn out. The Landlord states that following, in early November 2011, the room was advertised on Craigslist and the Salvation Army was informed of the vacancy. The room was re-rented for December 2011. The Landlord claims lost rental income of \$550.00.

Analysis

Section 45 of the Act provides as follows in relation to a tenant's notice to end a tenancy:

(1) A tenant may end a periodic 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, and

(b) 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.

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove that damage or loss exists, the damage or loss claimed was caused by the actions or neglect of the responding party, costs for the damage or loss have been incurred or established and steps were taken by the claiming party to minimize or mitigate the costs claimed. Although a tenant is required to provide a month's notice to end a tenancy, a short notice in itself does not automatically give rise to an entitlement to the landlord. The landlord is still required to prove that the act of the Tenant caused a loss. Given the undisputed evidence of the Landlord, I find that the Tenant did not give a month's notice to end the tenancy and that as a result, despite reasonable efforts to mitigate the loss, the Landlord suffered a loss of rental income. I find therefore that the Landlord is entitled **\$550.00** in lost rental income. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$600.00**. Setting the security deposit of **\$275.00** off this entitlement leaves **\$325.00** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$275.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$325.00**. If necessary, this order may be 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