



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MNR, MNDC, MNSD and FF

This application was brought by the landlord on February 29, 2012 seeking an Order of Possession to uphold a notice to end tenancy given, then dishonoured, by the tenant. The landlord also sought a Monetary Order for unpaid rent and loss of rent and recovery of the filing fee for this proceeding.

In addition I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to request authorization to retain the tenant's security deposit in set off against any amount found to be owed. I have also amended the landlord's application to correctly label claims for loss of rent and other losses as MNDC, loss or damages for breach of the rental agreement or legislation.

At the commencement of the hearing, the parties concurred that the tenant had vacated the rental unit on March 4, 2012 and that the Order of Possession was no longer required.

Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to a monetary award for unpaid rent, loss of rent and damages consequent to the tenant overholding .

Background and Evidence

This tenancy began in September 2011. Rent was \$900 per month and the landlord holds a security deposit of \$375 paid at the beginning of the tenancy.

The parties agreed that the tenant had a rent shortfall of \$100 for the rent due on February 1, 2012 and that amount remains owing.

During the hearing, the landlord gave evidence that, on January 31, 2012, the tenant had submitted written notice to end the tenancy on February 29, 2012. On the basis of that notice, the landlord entered into a rental agreement with new tenants to commence March 1, 2012.

The landlord stated that the tenant advised him on February 24, 2012 that she would be unable to vacate on February 29, 2012 as a plumbing problem had resulted in her new accommodation being unavailable.

The landlord advised her that, because of the obligation he had incurred with the new tenants, he would be unable to permit the tenancy to continue beyond the February 29, 2012 end date.

As matters turned out, the tenant vacated on March 4, 2012, and the new tenants were able to postpone their move-in until March 16, 2012.

Consequently, in addition to the \$100 rent shortfall for February 2012, the landlord seeks unpaid rent/loss of rent for the first half of March 2012.

The landlord has also submitted claims for time off work to attend the hearing, recovery of the cancellation fee when they had to cancel a vacation in order to resolve the tenancy crisis created by the tenant's refusal to honor the notice to end tenancy.

Analysis

Section 7 of the Act provides that, if either party to a rental agreement suffers a loss due to the others breach of the agreement or the legislation, the non-compliant party must compensate the other for that loss.

Section 67 of the *Act* authorizes the director's delegate to determine the amount of such a loss and order payment.

As noted at paragraph 3 of *Residential Policy Guideline 11-1*, a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy.

I find that by failing to honor the commitment to vacate the rental unit on February 29, 2012, the tenant caused the landlord's loss of one-half month's rent in the amount of \$450.

I further find that the tenant owes the landlord \$100 to cover the rent shortfall from February 2012.

In addition, 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.

There is no mechanism available in the legislation that permits a party to recover the costs preparing for a hearing, and I cannot award the landlord's loss of \$246.70 to cancel the vacation as the landlord had the option of being represented by an agent.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Unpaid rent for February 2012	\$100.00
Filing fee	50.00
Sub total	\$600.00
Less retained security deposit	- 375.00
TOTAL	\$225.00

Conclusion

In addition to authorization to retain the 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 \$225.00 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*.

As a matter of note, the tenant declined to provide her new address for service of this decision and was argumentative during the hearing.

Dated: March 15, 2012.

Residential Tenancy Branch