



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MND, MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent, liquidated damages, carpet cleaning, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security and pet damage deposits in set off against the balance owed

Background, Evidence and Analysis

This tenancy began on July 19, 2011 under a fixed term rental agreement set to end on June 30, 2012. Rent was \$1,195 per month and the landlord holds a security deposit of \$597.50, key deposit of \$25 and a pet damage deposit of \$200 paid on July 12, 2012 and August 2, 2012 respectively. 637.50 paid on September 1, 2011.

During the hearing, the landlord gave evidence that the tenant had submitted his notice to end on September 29, 2011 to take effect on October 31, 2011.

The landlord claims and I find s follows:

Loss of Rent for November 2011 - \$1,195. Section 45(2) of the *Act* states that a tenant's notice to end a fixed term tenancy agreement may not have an end date that is earlier than the end of tenancy date set by the agreement.

The tenant submitted that the parties had reached a mutual agreement to end the tenancy , relieving him of the loss of rent obligation, because the landlord had inadvertently written October instead of November into the portion of the consent agreement form detailing end of tenancy charges. The landlord stated that she had written October in error and when the tenant pointed it out to her, she changed it to November in the tenant's presence with advice to him that the claim was for loss of rent.

I find that the landlord has met the obligation articulated at Section 3.1 of the *Residential Policy Guidelines* requiring that : "Where a tenant has fundamentally breached the tenancy agreement, the landlord [may]....accept the end of the tenancy ...with notice to the tenant of the intention to claim damages for loss of rent for the remainder of the term of the tenancy.

The landlord submitted receipts showing newspaper advertising beginning in early October 2011 and stated there was also Craigslist advertizing in an effort to find new tenants. She gave evidence that she had shown the rental unit 16 times in October but she was unable to sign a new tenant until December 1, 2011. Therefore, I find that the landlord has met the obligation imposed by section 7(2) of the Act to do whatever is reasonable to minimize any losses.

The landlord's claim for loss for rent of \$1,195 for November 2011 is allowed in full.

Liquidated damages - \$300. Clause 3(a)(i) of the rental agreement provides that:

"To terminate the lease prior to the expiry date on June 30, 2012, 2012, the tenant will be required to give notice as provided for in section 12 herein. In addition, the tenant is required to pay \$300 as liquidated damages to cover administration costs – **this is not a penalty.**"

Therefore, I find that the tenant agreed to pay liquidated damages if he breached the fixed term agreement. This claim is allowed in full.

Carpet cleaning - \$84. While the standard requirement for clean carpets may be waived in tenancies of less than one year, it is required in tenancies of shorter duration in which there were pets.

While the tenant stated that the carpets were discoloured at the beginning of the tenancy, the landlord stated they had been sanitized as they were at the end. This claim is allowed.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding.

Security and pet damage deposits – (\$820.50). As per delegation under section 72(2)(b) of the *Act*, I hereby authorize and order that the landlord may retain this amount against the balance found to be owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Loss of rent for November 211	\$1,195.00
Carpet cleaning	84.00
Filing fee	<u>50.00</u>
Sub total	\$1,629.00
Less retained security deposit	<u>- 820.50</u>
Total	\$ 808.50

In addition to authorization to retain the security deposit and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$808.50, enforceable through the Provincial Court of British Columbia, 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*.

Dated: March 19, 2012.

Residential Tenancy Branch