



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary order, to keep all or part of the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

This tenancy began on February 1, 2011, with the parties entering into a written tenancy agreement for a month to month tenancy. The Tenant paid a security deposit of \$525.00 on December 31, 2010. The monthly rent was \$1,050.00 and was due on the first day of the month. I note that at the outset of the tenancy there was a second tenant listed on the tenancy agreement (the "Second Tenant"), although this person was not included in the Landlord's claims.

The Landlord alleges that the Tenant vacated the rental unit in March of 2012, without giving the required Notice to End Tenancy. The Agent for the Landlord testified that a different Agent was told by the Tenant on March 22, 2012, that the Tenant was vacating the rental unit.

On March 23, 2012, the Landlord wrote to the Tenant and explained they required a Notice to End Tenancy in writing from the Tenant. The Landlord also explained that the Tenant would be responsible for an additional month of rent due to the lack of proper Notice to End Tenancy.

The Agent for the Landlord testified that the Landlord began advertising the rental unit on March 22, 2012, when they learned the Tenant was vacating the rental unit.

The Agent for the Landlord testified that the rental unit was re-rented on April 16, 2012. The Landlord is claiming for ½ of a month of rent to April 15, 2012.

The Tenant testified that the Second Tenant had given the Landlord a written Notice to End Tenancy on February 29, 2012, by attaching it to the rent cheque for March 2012 and placing the Notice and the cheque in the Landlord's mail slot.

The witness for the Tenant testified that the Second Tenant had used her laptop computer to type out the written Notice to End Tenancy, however, the witness testified that the laptop was now broken and she could not print off a copy of the letter.

I note that both the Agent for the Landlord and the Tenant expressed that otherwise this had been a very positive tenancy, with a good business relationship.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant breached the Act by failing to give the Landlord the required Notice to End Tenancy.

I find that the Tenant has insufficient evidence to prove that the Second Tenant gave the Landlord a written Notice to End Tenancy. The Tenant had no copy of the written Notice, nor did he have any evidence, such as a signed statement from the Second Tenant, that the Second Tenant actually delivered the Notice. I note that neither the Tenant nor the witness for the Tenant personally saw the alleged delivery of the Notice letter.

In any event, even if the Second Tenant had given the Landlord a written Notice to End Tenancy on February 29, 2012 (which I do not accept), the Notice would not be deemed to have been served until March 3, 2012, under section 88 (f) of the Act.

This section of the Act provides that a document served by leaving it in a mail slot is deemed served three days after it is left. Therefore, the alleged Notice would have been served on March 3, 2012, and would not have been effective to end the tenancy at the end of March 2012. It would have been effective at the end of April 2012, pursuant to the Notice to End Tenancy section 45 in the Act.

Therefore, I find the Landlord has established a total monetary claim of **\$575.00** comprised of loss of rent for ½ the month of April 2012, in the amount of \$525.00, and the \$50.00 filing fee for the Application.

I allow the Landlord to retain the security deposit of \$525.00 in partial satisfaction of the claim, and I grant the Landlord a monetary order for the balance due of **\$50.00**

This order must be served on the Tenant and may be enforced in the Provincial Court of British Columbia.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 4, 2012.

Residential Tenancy Branch