



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to loss of April, 2012, rent revenue in the sum of \$1,330.00?

May the landlord retain the deposit in the sum of \$665.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The 1 year fixed-term tenancy commenced on September 1, 2011;
- The tenancy was to end in August, 2012;
- Rent was \$1,330.00 per month, due on the first day of each month; and
- A deposit in the sum of \$665.00 was paid.

There is no dispute that the tenant gave written notice dated February 18, 2012, to vacate the unit on March 31, 2012. The landlord provided the tenant with a letter dated February 18, 2012, in which the tenant was warned that she was responsible for the term of the tenancy, to August 31, 2012.

A copy of the tenancy agreement, notice to end tenancy from the tenant and a letter outlining tenant obligations were supplied as evidence. The tenant was told that the landlord would do their best to rent the unit in order to reduce the tenant's obligations to pay rent.

The landlord immediately began advertising the unit and provided the name of multiple on-line and newspaper advertising services that they used. The unit was rented effective May 1, 2012. The landlord is claiming the loss of April, 2012, rent revenue.

The tenant stated that when the unit was rented they were told that they could possibly leave earlier and that they might have to pay liquidated damages only. The tenants had explained the situation to the landlord; that the unit might not be required for a period of 1 year and believe they should not have to pay for the loss of April, 2012, rent revenue.

Analysis

Section 45(2) and 45(3) of the Act provide:

(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.

3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement end unless the landlord has failed to comply with a material term of the tenancy.

I find that the landlord took appropriate steps to warn the tenant of the possible liability for rent payments and that the landlord took appropriate steps to mitigate a possible loss by advertising the unit and locating a new occupant for May 1, 2012.

Therefore, based on the terms of the tenancy agreement, pursuant to section 67 of the Act, I find that the landlord is entitled to compensation in the sum of \$1,330.00 of the loss of April, 2012, rent revenue.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$665.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1380.00, which is comprised of \$1330.00 in loss of rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$665.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$715.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: May 31, 2012.

Residential Tenancy Branch