



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application for a monetary award for unpaid rent/loss of rent and recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

Issue(s) to be Decided

Did the tenants breach their fixed term agreement? If so, what is the extent of the landlord's loss? Did the landlord do whatever is reasonable to minimize that loss.

Background and Evidence

This tenancy began on September 16, 2011 under a fixed term rental agreement set end on August 31, 2012. Rent was \$1,150 per month and the landlord holds a security deposit of \$575 and a pet damage deposit off \$575.

As a matter of note, there were two signatories to the rental agreement but the landlord received the forwarding address of only one of them. As this was a co-tenancy, the tenants share joint and several liability with respect to the tenancy and either or both may act on behalf of the two.

During the hearing, the landlord gave evidence that the tenants had left the tenancy on or about March 31, 2012, five months before the end date set by the fixed term rental agreement.

The attending tenant gave evidence that she had given the landlord written notice that the tenants would be vacating on March 31, 2012.

As the landlord was unable to find a new tenant until May 1, 2012, the landlord seeks the unpaid rent/loss of rent for April 2012.

Analysis

Section 45(2) of the *Act* states that a tenant's notice to end a fixed term tenancy agreement cannot have an effective date that is earlier than the end date of the fixed term stated on the rental agreement. I find that the tenants breached of the *Act* and the rental agreement by leaving the tenancy early.

Section 7(1) of the *Act* states that, if one party to a rental agreement suffers a loss due to the non-compliance of the other with the legislation or agreement, then the non-compliant party must compensate the other for that loss.

However, section 7(2) states that a party making a claim under this section must do whatever is reasonable to minimize the loss.

In the present matter, the landlord has submitted no documentary evidence to prove what efforts were made to find new tenants. The property manager stated that he had advertised on Craigslist, but has submitted no record of the listings nor written evidence the new tenancy beginning on May 1, 2012.

I find, on the balance of probabilities, that the landlord did suffer a loss of rent, but, in the absence of proof of advertising and a copy of the new rental agreement, I cannot be certain if the landlord's effort to find new tenants was reasonable to minimize the claimed loss.

Therefore, I find that the landlord is entitled to recover one-half of the claimed loss of rent for April 2012.

I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the amount owed by the tenant from the security and pet damage deposits and return the remainder to the applicant tenant.

Thus, I find that accounts balance as follows:

Security deposit paid (no interest due)	\$ 575.00
Total of tenants' credits	\$1.150.00
Less award to landlord for loss of rent for ½ month.	- 575.00
Less landlord's filing fee	- 50.00
REMAINDER TO BE RETURNED TO TENANT	\$ 525.00

Conclusion

The landlord is authorized to retain \$625 from the security and pet damage deposits and the tenant's copy of this decision is accompanied by a Monetary Order for \$525 for return of the balance. The Order may be filed with the Provincial Court of British Columbia and enforced as an order of the 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: June 05, 2012.

Residential Tenancy Branch