



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that he sent an evidence package and copies of the Application for Dispute Resolution to each Tenant by registered mail. The Tenant with the initials "B.W." acknowledged receipt of those documents. The Tenant with the initials "J.M." stated that he did not pick up the documents that were mailed to him but he has viewed the documents that were served to his co-tenant.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2010; that during the latter portion of the tenancy the Tenant was paying monthly rent of \$1,125.00; that rent was due by the first day of each month; that the Tenant paid a security deposit of \$550.00 and a pet damage deposit of \$100.00; that on March 01, 2012 the Landlord received the Tenant's written notice to end the tenancy at the end of March of 2012; that the Tenant returned the keys to the rental unit on March 31, 2012; and that the Landlord received a forwarding address for each Tenant, via text, on, or about, April 04, 2012.

The Landlord and the Tenant agree that the rental unit was shown multiple times during the month of March. The Landlord stated that he began advertising the rental unit on March 01, 2012; that he advertised it on 4 popular websites; that he fully removed and replaced the ads on two of those websites approximately every 1.5 weeks; that he advertised in a local newspaper; that he posted an advertisement at his place of employment; and that he stopped advertising on April 26, 2012 when he found a new tenant for May 01, 2012.

The Tenant with the initials "B.W." stated that he was able to find advertisements on the website during the month of March of 2012 and that he searched two of the most popular websites cited by the Landlord in April of 2012 but was unable to find an advertisement for the unit.

The Tenant contends that even though they were one day late in serving notice to end the tenancy the Landlord still had ample time to find a new tenant.

Analysis

I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with written notice of the Tenant's intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on March 31, 2012 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, February 29, 2012. As the Tenant did not give written notice to the Landlord until March 01, 2012, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was April 30, 2012.

I find that the late notice to end the tenancy may have contributed, to a small degree, to the loss of revenue experienced by the Landlord in April of 2012, as it delayed his ability to advertise the rental unit by one day.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, I find that the Landlord has submitted insufficient evidence to show that he advertised the rental unit during the month of April of 2012. In reaching this conclusion I was heavily influenced by the absence of evidence, such as copies of the advertisements or receipts for advertisements, that corroborates the Landlord's testimony that he advertised the rental unit in a variety of locations during the month of April.

In reaching this conclusion I was also influenced by the Tenant with the initial "B.W."s testimony that in April of 2012 he searched two of the locations where the Landlord declared he had advertised the unit and he was unable to locate an advertisement for the unit.

As the Landlord has failed to establish that he took reasonable steps to mitigate his loss of revenue, I dismiss the Landlord's application for a monetary Order.

Conclusion

I find that the Landlord's application has been without merit and I find that the Landlord is not entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

As the Landlord has not established that he is entitled to retain any portion of the Tenant's pet damage or security deposit, I find that he must return those deposits, in the amount of \$650.00. Based on these determinations I grant the Tenant a monetary Order for the amount of \$650.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: June 11, 2012.

Residential Tenancy Branch