



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 15, 2011 to September 30, 2012. Monthly rent of \$765.00 and parking of \$10.00 are both due and payable in advance on the first day of each month, and a security deposit of \$387.50 was collected. A move-in condition inspection report was completed with the participation of both parties on September 16, 2011.

By letter dated April 3, 2012, the tenant gave notice to end the tenancy effective April 30, 2012. A move-out condition inspection report was completed with the participation of both parties on April 28, 2012, and the tenant paid May's rent in full by cash.

After advertising, new renters were found effective August 1, 2012. Accordingly, the landlord seeks loss of rental / parking income limited to the months of June and July 2012 in the amount of \$1,550.00 (2 x \$775.00). There is no dispute that the tenant left post-dated cheques with the landlord for the months of June, July, August and September 2012. During the hearing the tenant confirmed that the rent / parking cheques for June and July 2012 had been cashed by the landlord.

For the following reasons, the tenant objects to the landlord's application for dispute resolution and to the landlord's application to recover the filing fee:

- by way of the tenant's signature on the move-out condition inspection report on April 28, 2012, she authorized the landlord to retain her full security deposit and apply it against loss of rental / parking income for the months of June, July, August & September 2012;
- rent was paid in full by cash for May 2012;
- despite the above, the landlord filed an application for dispute resolution on May 10, 2012.

In response to the tenant's concern, the landlord set out her understanding which is that she had 15 days after the end of tenancy to either return the security deposit or file an application for dispute resolution.

Further to the above, the landlord cited the considerable costs incurred for advertising for new renters.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, and provides in part as follows:

45(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 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.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony, I am persuaded that both parties have an understanding of the above statutory provisions.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or...

Based on the documentary evidence and testimony, I find that the landlord has established entitlement to loss of rental / parking income limited to June and July 2012, as new renters have been found for the unit effective August 1, 2012. I further find that the tenant has paid the rent / parking in full for these two (2) months.

I further find that as the tenant provided the landlord with written consent to retain her security deposit, in combination with acknowledging her potential responsibility for loss of rental / parking income for June, July, August & September 2012, by way of her signature in the move-out condition inspection report, the landlord's application for dispute resolution on May 10, 2012 was premature and ultimately unnecessary. In the result, the landlord's application to recover the filing fee is hereby dismissed.

The landlord is ordered to repay to the tenant the full amount of her security deposit of \$387.50, and I hereby issue a monetary order in favour of the tenant to this effect.

Further, while the landlord has noted the costs incurred for advertising for new renters, the landlord has not specifically applied to recover any of those costs.

Finally, I note that while clause # 5 in the written tenancy agreement speaks to a provision for the assessment of liquidated damages in the event, among other things, that a tenant ends the fixed term tenancy, no specific amount has been identified and agreed to by the parties in the tenancy agreement.

Conclusion

The landlord's application to recover loss of rental / parking income for June & July 2012 has been satisfied by way of the tenant's post-dated rent cheques. As new renters have been found effective from August 1, 2012, the tenant's liability for loss of rental income for August and September 2012 has ended. Accordingly, the landlord's application for a monetary order as compensation for loss of rental income for June, July, August & September 2012 is hereby dismissed.

As the tenant made provision for payment of rent for the full term of her tenancy prior to vacating the unit, and as the tenant provided certain written consent to the landlord at the time of the move-out condition inspection report, as detailed above, the landlord's application to recover the filing fee is hereby dismissed.

The landlord is ordered to repay the tenant's full security deposit of \$387.50, and I grant the tenant a monetary order under section 67 of the Act for this amount.

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: July 03, 2012.

Residential Tenancy Branch