



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 / loss of rental income, 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 the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, what ultimately became a month-to-month tenancy began on April 1, 2007. Rent was due and payable in advance on the first day of each month. Monthly rent at the start of tenancy was \$850.00; rent was \$960.00 when tenancy ended. A security deposit of \$425.00 was collected on March 1, 2007.

It appears that on or about June 14, 2012, and later, on or about June 23, 2012, the tenant gave verbal notice of her intent to end tenancy effective June 30, 2012. Subsequently, new renters were found effective July 15, 2012. Monthly rent for the new renters was \$1,100.00. The landlord seeks to recover unpaid rent / loss of rental income for the period from July 1 to 14, 2012, in addition to the \$50.00 filing fee, and to have the security deposit plus interest applied to the amount of any entitlement established.

The tenant testified that at no time after she gave verbal notice, were there any showings of the unit to prospective new renters. For his part, the landlord testified that advertising for units in the building is ongoing by way of craigslist and signage at the building. The landlord also noted that prospective renters make inquiries of the landlord about vacancies as a result of referrals from others.

Further, the landlord testified that after the end of this tenancy the unit was repainted, and he understands that carpet may also have been removed. The landlord testified

that the remedial work undertaken in this unit, as might be the case in other units, was a function of the landlord's concern to rent units that are in top condition. In other words, paint and flooring were not renewed / upgraded in this unit as a result of any particular damage or abuse by the tenant.

Where a tenant has not vacated a unit until month's end, and where work such as painting and flooring are anticipated before possession is taken by new renters, while the new tenancy might begin at the start of the month following the end of the previous tenancy, new renters may pay only a pro-rated portion of rent for their first month, reflecting time required by the landlord to complete the renewals / upgrades necessary before the actual move-in date. In the circumstances of this dispute, the landlord was unable to confirm precisely how much time was required to complete the renewals / upgrades, however, he noted that the trades workers are very proficient.

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 speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic 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, and
- (b) 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 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Section 7 of the Act speaks to the **Liability for not complying with this Act or a tenancy agreement**:

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.

Residential Tenancy Policy Guideline # 5 speaks to "Duty to Minimize Loss," and provides in part:

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the legislation but specifies a time that is earlier than that permitted by the legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

Based on the documentary evidence and testimony of the parties, I find that the tenant's manner of giving notice to end the tenancy does not comply with the above statutory provisions. In short, the tenant did not give one full month's notice, and notice was not given in writing. Following from the foregoing, I find that the tenant's potential liability for the landlord's loss of rental income for July is \$960.00, which was the amount of her monthly rent when tenancy ended.

I am satisfied that the landlord undertook to mitigate the loss of rental income in a timely manner by various means previously identified, and that these ultimately led to the successful re-renting of the unit effective July 15, 2012. New renters agreed to pay a higher level of rent for July of \$1,100.00, and as the new tenancy agreement was effective from July 15, 2012, the landlord collected half of one month's rent of \$550.00 ($\$1,100.00 \div 2$). In the result, the tenant's potential liability for the landlord's loss of rental income for July is reduced by \$550.00 to \$410.00 ($\$960.00 - \550.00).

However, I find that the landlord had pre-determined that certain work would be undertaken in the unit after the tenant had vacated. On a balance of probabilities, I find that a reasonable period of time required for this work to be completed would be 3 days. Accordingly, I find that the tenant's potential liability for the landlord's loss of rental income for July is reduced from 14 days to 11 days (July 4 to 14, 2012). In the result, I find that the landlord has established entitlement to loss of rental income for the 11 day period from July 4 to 14, 2012. I find that the quantum of this entitlement is \$340.67, which is calculated as follows:

$$\$960.00 \text{ (monthly rent)} \div 31 \text{ (number of days in July)} = \$30.97 \text{ (daily rent)}$$

$$\$30.97 \text{ (daily rent)} \times 11 \text{ (# days of entitlement)} = \$340.67$$

As the landlord has succeeded in this application, I find that the landlord has also established entitlement to recovery of the \$50.00 filing fee. The total entitlement established by the landlord is therefore \$390.67 ($\$340.67 + \50.00).

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, and provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all of the above, I order that the landlord retain \$390.67 from the security deposit of \$425.00 plus interest of \$11.80 (total: \$436.80), and I order the landlord to repay the balance to the tenant in the amount of \$46.13 (\$436.80 - \$390.67). Finally, I hereby issue a monetary order in favour of the tenant for this amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$46.13**. Should it be necessary, this order may be served on the landlord, filed in the 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: September 24, 2012.

Residential Tenancy Branch