



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 matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for a lost rental income, to recover the filing fee for this proceeding and to keep the balance of the Tenant's security deposit in partial payment of those amounts.

The Landlord served the Tenant with the Application and Notice of Hearing (the "hearing package") on July 19, 2012 by registered mail. According to the Canada Post online tracking system, the Tenant received the Landlord's hearing package on July 29, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for lost rental income?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on February 15, 2012 and was to expire on February 28, 2013 however it ended on June 22, 2012 when the Tenant moved out. Rent was \$1,300.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$650.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for June 2012. The Landlord's agent also claimed that the rental unit was not re-rented to a new tenant until July 15, 2012 with the result that the Landlord lost rental income for ½ of July 2012. The move out condition inspection report completed by the Parties on June 22, 2012 shows that the Tenant gave his written authorization to the Landlord to deduct \$625.00 from his security deposit in payment of liquidated damages.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that rent of \$1,300.00 is unpaid for the month of June 2012 and that the Landlord is entitled to recover that amount.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a Tenant ends a fixed term tenancy earlier, they may have to compensate a Landlord for any lost rental income they incur as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord took reasonable steps to re-rent the rental unit and is therefore entitled to recover rent for the period, July 1 – 14, 2012, in the pro-rated amount of \$587.10. As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. In summary, I find that the Landlord is entitled to a monetary award of \$1,937.10.

Clause 5 of the Parties' tenancy agreement states that if the Tenant ends the tenancy before the end of the fixed term, the Tenant will pay the Landlord liquidated damages of \$625.00 *in addition* to any other amounts for unpaid rent or damages to the rental property. I find that on June 22, 2012 the Tenant gave the Landlord written authorization to deduct \$625.00 from his security deposit for liquidated damages. Consequently, I Order the Landlord pursuant to s. 38(4) of the Act to keep the balance of the Tenant's security deposit of \$25.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$1,912.10.

Conclusion

A Monetary Order in the amount of \$1,912.10 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 20, 2012.

Residential Tenancy Branch