



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC O FF

Preliminary Issues

After review of the application for dispute resolution the Landlord was advised that her request for damages/cleaning charges for the rental unit and liquidated damages was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for compensation for cleaning or liquidated damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the fact that the application was filed on October 1, 2012, the day before the tenancy ended, and by the absence of a list of items being claimed that shows how much compensation the Landlord was claiming for each item.

While I accept that the Landlord provided receipts for cleaning and a copy of the tenancy agreement, I find that these items do not clarify the nature of items she was attempting to claim after making the application. I find that the receipt and tenancy agreement are not sufficient notice of the nature of the Landlord's claims and I find that proceeding with the Landlord's claim for cleaning and liquidated damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which she claims compensation for these two items.

The Landlord indicated on her application in the details of the dispute that she was seeking compensation for loss of October 2012 rent and rent lost due to the Tenant's breach of the tenancy agreement. Therefore, I proceeded to hear the evidence pertaining to loss of rent for October 2012 and for the remainder of the fixed term tenancy agreement.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy

agreement, and to recover the cost of the application from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The following facts were not in dispute:

- The parties entered into a written fixed term tenancy agreement that began on September 1, 2012 and was set to end on August 31, 2013; and
- Rent was payable on the first of each month in the amount of \$1,880.00; and
- As of September 1, 2012 the Tenant had paid a total of \$940.00 as the security deposit; and
- The Tenant advised the Landlord by e-mail, on September 28, 2012, that she would be ending her tenancy on October 2, 2012; and
- The Tenant vacated the property as of October 2, 2012; and
- The parties attended the move in condition inspection and signed the form on September 1, 2012 and they attended the move out condition inspection and signed the form on October 3, 2012; and
- The Tenant has not provided the Landlord a forwarding or service address in writing.

The Landlord advised that she was able to re-rent the unit effective October 15, 2012 for the monthly rent of \$1,825.00. She is seeking loss of rent for October 1 – 14, 2012 in the amount of \$940.00 plus \$55.00 for each month remaining in the tenancy

agreement from October 15, 2012 to August 31, 2013 which she calculated to be \$605.00.

The Tenant submitted that she could no longer reside in the rental unit with her son because the unit required extensive maintenance preventing her from being able to cook in the unit. She stated that the Landlord continued to enter her suite without notice and after speaking with the neighbours she felt the situation would never improve so she decided to leave as soon as she found another place.

The Tenant confirmed that she did not seek a remedy through the *Residential Tenancy Branch* and she does not possess an Order authorizing her to end her fixed term tenancy agreement early.

During the course of the hearing I issued a verbal Order instructing the Tenant to provide the Landlord with a forwarding or service address, in writing, forthwith.

Analysis

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord with 1 month's written notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

In this case the Tenant could not end this tenancy in accordance with the Act until August 31, 2013. The Tenant vacated the property October 2, 2012, after providing the Landlord notice by e-mail on September 28, 2012, which ended the tenancy in breach of the Act causing the Landlord to suffer a loss of rent. The Landlord was able to re-rent the unit as of October 15, 2012 for the lower monthly rent of \$1,825.00.

Based on the foregoing, I find the Landlord did what was reasonable to mitigate her losses by re-renting the unit as soon as possible for a reduced rent. Therefore, I award the Landlord **\$1,517.50** in loss of rent which is comprised of the following amounts:

\$940.00	October 1 – 14, 2012
27.50	October 15 – 31, 2012
550.00	\$55.00 x 10 months (November 2012 through to August 31, 2013)

The Landlord has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Loss of Rent	\$1,517.50
Filing Fee	<u>50.00</u>
SUBTOTAL	<u>\$1,567.50</u>
LESS: Security Deposit \$940.00 + Interest 0.00	<u>-940.00</u>
Offset amount due to the Landlord	<u>\$ 627.50</u>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$627.50**. This Order is legally binding and must be served upon the Tenant.

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: November 16, 2012.

Residential Tenancy Branch