



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD and FF

Introduction

This hearing was convened on the landlord's application of September 10, 2012 seeking a monetary award for unpaid rent after the tenant gave notice the day after the tenancy began that she had left the tenancy. The landlord also sought to recover the filing fee for this proceeding and authorization to retain the security deposit in set off.

Despite having been served with the Notice of Hearing on September 12, 2012 in person by a process server as verified by an Affidavit of Personal Service submitted into evidence, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award as requested.

Background and Evidence

This tenancy began on March 1, 2012, although the tenant received the keys on February 26, 2012 in exchange for her offer to finish touch up painting. Under the rental agreement signed on February 5, 2012, the tenancy was for a one-year fixed term to February 28, 2013. Rent was \$1,300 per month and the tenant agreed to pay security and pet damage deposits of \$650 each.

However, the tenant put a stop payment on the cheque that was to cover March 2012 rent and the pet damage deposit, leaving the landlord with only the \$650 security deposit.

During the hearing, the landlord submitted a series of email exchanges with the tenant substantiating the tenant's ongoing commitment to the tenancy throughout February 2012, including requests for the keys a few days early, arrangements for the elevator for the move-in, and an offer to assist the landlord with the touch-up painting.

By email of March 2, 2012, the tenant advised the landlord that she had left the tenancy the day before due to her employer failing to pay two months wages and other personal difficulties that required her to move back to Saskatchewan.

In subsequent email exchanges, the land offered the tenant the opportunity to settle matters by applying the security deposit to the March 2012 rent, and paying the balance due if the tenant would provide a forwarding address.

When the tenant did not reply by March 16, 2012, the landlord withdrew the offer and subsequently hired a skip tracer to locate the tenant.

The landlord stated that she had been able to start a new tenancy on March 20, 2012 and now seeks the per diem rent for the loss of rent for the 19 days of March 2012.

The landlord also seeks the per diem rate for the four days of from February 26 to February 29, 2012 on the grounds that the tenant did not do the promised touch up painting.

In addition, the landlord seeks the \$150 move-out fee which was covered by the landlord if the tenancy continued for the one-full year.

Analysis

Section 45 of the *Act* states that a tenant's notice to end a fixed term tenancy agreement cannot have an end of tenancy date earlier than the end date set by the agreement which was February 28, 2013 in the present matter.

Section 7(1) of the *Act* states that, if a party to a rental agreement suffers a loss due to the non-compliance of the other with the legislation or rental agreement, then the non-compliant party must compensate them for that loss. Section 7(2) imposes a duty on the party suffering the loss to do whatever is reasonable to minimize it.

In the present matter, I accept the evidence of the landlord that she began to advertise the rental unit as soon as she knew the tenant had left and was able to find new tenants for March 20, 2012.

Therefore, I find that the landlord is entitled to recover the per diem rent for the first 19 days of March 2012 from the tenant.

As to the last four days of February 2012, I find that, as they were not part of the rental agreement, the landlord has suffered no loss for the period and cannot claim rent.

Clause 20 on the addendum to the rental agreement states that, if the tenant vacates after one year, then the landlord will be responsible for the \$150 move-out fee required by the building's strata corporation. In this instance, I find that the landlord is entitled to recover the move-out fee.

As to the security deposit, an addendum to the rental agreement states that, If the tenant occupies the unit for less than six months, the tenant forfeits the security deposit.

Section 20(e) of the *Act* provides that a landlord must not:

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Therefore, I find that part of the rental agreement is made outside the *Act* and is unenforceable. However, as authorized under section 72 of the *Act*, I order that the landlord can retain the security deposit in set off against the balance owed to her.

As the application has succeeded on its merits, I find that the landlord is entitled to recovery the filing fee for this proceeding from the tenant.

Thus, I find that the tenant owes to the landlord and amount calculated as follows:

Rent for March 1 to March 19, 2012 ($19/31 = .613$) x \$1,300	\$796.90
Filing fee	<u>50.00</u>
Sub total	\$996.90
Less retained security deposit	- <u>650.00</u>
TOTAL owed by tenant after security deposit retained	\$346.90

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$346.90**, enforceable through the Provincial Court of British Columbia, for service on 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 26, 2012.

Residential Tenancy Branch