



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on October 31, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant by registered mail. The landlord has a Canada Post receipt and tracking number for each package mailed. The mail was returned; each envelope was marked as unclaimed.

On October 24, 2012 the landlord received information confirming the tenant's current residential mailing address. The landlord has an information-sharing agreement with the Ministry of Social Development. The Ministry confirmed that the address the landlord possessed was in fact the current residential address for each of the respondents. That address was then used for service of the hearing package to each of the respondents on October 31, 2012.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act; however the tenants did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of December 2011 rent revenue?

Is the landlord entitled to filing fee costs?

Background and Evidence

On November 15, 2011 both tenants signed a tenancy agreement that was to commence on December 1, 2011. Rent was \$653.00 per month; the subsidized rent payable was \$595.00. A copy of the agreement was supplied as evidence.

On November 21, 2011 the tenants contacted the landlord to tell them that they would not move into the unit.

On June 26, 2012, the landlord sent the tenants a letter reminding them that they owed \$595.00 for the loss of rent revenue, as they had reneged on the agreement they signed. The landlord had not been able to rent the unit effective December 1, 2011 and lost rent income for that month.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 16 of the *Act* provides:

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Therefore, as the tenants each signed the tenancy agreement that required them to move into the unit effective December 1, 2011, I find that their rights and obligations commenced on November 15, 2011; the date they signed the tenancy agreement.

Pursuant to section 44(f) of the *Act*, I find that effective November 21, 2011 the tenancy ended. The tenants informed the landlord that they would not move into the unit; thus ending the agreement on that date.

The landlord was then required, within a period of 10 days, to locate new occupants. As it was so late in the month the landlord did not succeed and they suffered a loss of December, 2011 rent in the subsidized amount of \$595.00. Therefore, I find that the landlord is entitled to compensation in the sum of \$595.00; as a result of the tenant's failure to provide proper notice ending the tenancy. The tenants were required to give written notice and could then have ended the tenancy effective December 31, 2011.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for \$645.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to compensation in the sum of \$595.00 for loss of rent revenue.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 30, 2013

Residential Tenancy Branch

