



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Tenant did not give notice to leave*" in the details of dispute on their original application

Based on the aforementioned and the Landlord's oral submission, I find the Landlords' intention of seeking to recover money for loss of rent, for a period after the Tenant vacated the property, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep all or part of the security deposit, and to recover the cost of the filing fee 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, respond to each other's testimony, and to provide closing remarks. 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

Should the Landlords be awarded a Monetary Order?

Background and Evidence

The Tenant submitted late documentary evidence on January 15, 2013, which included, among other things, copies of: a blank tenancy agreement; an addendum to the tenancy agreement; e-mails between the parties; and photos of the rental unit and her dog.

The Landlord confirmed he did not submit evidence to the *Residential Tenancy Branch* in the required format or in the required time frame as he sent it January 14, 2013 by e-mail.

The following facts were not in dispute: the parties entered into a fixed term tenancy agreement that began on December 1, 2011 and was set to end on November 30, 2012; rent was payable on the first of each month in the amount of \$1,100.00, and on November 9, 2011 the Tenant paid \$550.00 as the security deposit; the parties mutually agreed that the Tenant could end the tenancy early by providing 30 days notice to end the tenancy; on September 17, 2012 the Tenant provided notice to end her tenancy effective September 30, 2012; neither party could remember if the Tenant was provided a copy of the move in condition inspection report form that was completed November 19, 2012; and the Landlord did not schedule or conduct a move out inspection.

The Landlord submitted that he was seeking loss of rent for October 2012 as they did not enter into a new lease agreement until November 2012 which began on January 1, 2013. He confirmed that they began advertising the unit as soon as he received the Tenant's notice. He also acknowledged that he did not arrange to conduct a move out inspection with the Tenant.

The Tenant confirmed that she provided less than the required thirty days notice to end her lease because she wanted to keep the dog that the Landlords disapproved of. Although she had only signed a foster agreement during the time she set to introduce the dog to the Landlords, she said she became too attached to him so she had to move so she could keep him.

Analysis

Both parties provided their evidence late to each other and the Landlord did not provide evidence in the approved form to the *Residential Tenancy Branch*. The *Residential Tenancy Branch Rules of Procedure* stipulates that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural

justice. Therefore, I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, documentary evidence received by the *Residential Tenancy Branch* from either party will not be considered in my decision. I did however consider their oral testimony.

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The undisputed evidence supports the parties mutually agreed to allow the Tenant to end her fixed term lease early if she provided the Landlords thirty days notice. The Tenant ended the lease early in breach of their mutual agreement, and in breach of the Act, by providing only thirteen days notice which caused the Landlords to suffer a loss of rent for October 2012. The Landlord mitigated their loss by taking reasonable steps to re-rent the unit as soon as possible.

Based on the foregoing, I find the Landlords have met the burden of proof and I award them loss of October 2012 rent in the amount of **\$1,100.00**.

The Landlords have been successful with their claim; therefore, I award recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the Landlords are 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 October 2012 Rent	\$1,100.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,150.00
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$ 600.00</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$600.00**. This Order is legally binding and must be served upon the Tenants. In the event that the

Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: January 22, 2013

Residential Tenancy Branch

