



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF / MNSD

Introduction

This hearing concerns 2 applications: i) by the landlord to retain the security deposit / and to recover the filing fee; and ii) by the tenant for a monetary order reflecting the return of the security deposit. The landlord attended and gave affirmed testimony.

Despite scheduling of the hearing in response to applications by both parties, and despite the landlord's service of his application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The landlord testified that he did not receive a hearing package from the tenant.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The rental unit is one room located in a house, within which several rooms are rented. The landlord is not the owner, but rather he is also a renter in the house.

There is no written tenancy agreement in evidence for this tenancy which began sometime in the spring of 2012. Monthly rent of \$450.00 is due and payable in advance on the first day of each month, and a security deposit of \$225.00 was collected.

By letter dated October 10, 2012, the tenant gave notice to end tenancy effective on or before October 31, 2012. Thereafter, the landlord testified that the tenant actually vacated the unit on October 10, 2012. Rent was paid to the end of October.

Subsequently, by letter dated November 8, 2012, the tenant provided the landlord with a forwarding address and requested the return of his security deposit. The landlord filed an application for dispute resolution on November 21, 2012.

The landlord testified that advertising for a new renter took place immediately after the tenant vacated the unit. Advertising was undertaken online via craigslist and by way of a local newsletter. A new renter was not found until November 23, 2012. The new renter paid pro-rated rent to the end of November in the amount of \$110.00. In view of the tenant's short notice to end the tenancy, the landlord seeks to retain the security deposit in order to offset some of the loss of November's rental income.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the length of notice provided by the tenant does not comply with the above statutory provisions. I further find that the landlord attempted to mitigate the loss of rental income for November by undertaking in a timely manner to advertise for new renters. As rent collected from the new renter in November was limited to \$110.00, the landlord's actual loss of rental income for November appears to be \$340.00 (\$450.00 - \$110.00). However, further to recovery of the filing fee, in his application the landlord seeks compensation limited to retention of the \$225.00 security deposit.

Following from all the above, I find that the landlord has established entitlement to retention of the \$225.00 security deposit.

I further find that the landlord has established entitlement to recovery of the \$50.00 filing fee, and I grant the landlord a monetary order to that effect.

Conclusion

The tenant's application is hereby dismissed.

I order that the landlord retain the full security deposit of **\$225.00**.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$50.00**. This order may be served on the tenant, filed in the 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: February 26, 2013

Residential Tenancy Branch

