



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and each party acknowledged receiving the other's evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this one year, fixed term tenancy began on September 1, 2012, was to end on September 1, 2013, monthly rent was \$1250.00, and the tenant paid a security deposit of \$625.00 on or about May 16, 2012. The parties agreed that the tenant vacated the rental unit on November 1, 2012.

I also heard evidence from the parties that the tenant originally occupied the rental unit for a 3 month fixed term, beginning on June 1, 2012, prior to entering into the 1 year fixed term tenancy.

The landlord said that the tenant supplied notice via email and telephone on October 12, 2012, that he intended to vacate the rental unit by November 1, 2012.

The landlord said the rental unit was placed immediately back on the market for rental, and that they were able to secure a new tenant starting November 15, 2012.

The landlord said that the potential loss of rent revenue due to the insufficient notice to vacate provided by the tenant was \$1250.00; however as a new tenant moved into the rental unit, the landlord requested that their original monetary claim of \$1250.00 be reduced to \$625.00.

The landlord requested that they be able to retain the tenant's security deposit in satisfaction of their monetary claim.

In response, the tenant said that he was forced to move from the rental unit due to the noise coming from other rental units in the residential property and from road noise. In further explanation, the tenant said that the landlord had promised double glazing on the windows, but failed to do so.

The tenant further stated that the original intent was that the tenancy was to be on a month to month basis, not a fixed term.

The tenant also argued that the landlord did not allow him to search for a new tenant and that he would have been able to secure a new tenant for November 1, 2012.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement,

third, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the issue of unpaid rent, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, as the tenant submitted notice on October 12, 2012, that he was moving out on November 1, 2012, I find that the tenant submitted insufficient notice to end the tenancy as required under section 45 and is liable to the landlord for rent for the month of November 2012, under the terms of the tenancy agreement.

I am also satisfied that the landlord took reasonable steps to minimize their loss by marketing the rental unit for re-rent in a timely manner as the landlord secured a new tenant for November 15, 2012, reducing their loss of rent revenue.

I therefore find that the landlord has proven a monetary claim for loss of rent revenue for November 1-15, 2012, in the amount of \$625.00. In satisfaction of this monetary claim, I allow the landlord to retain the security deposit of \$625.00 as per their request.

I find the landlord's application had merit and I award them recovery of the filing fee of \$50.00.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$50.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

Conclusion

The landlord may retain the security deposit of \$625.00 in satisfaction of their monetary claim for loss of rent revenue.

The landlord is granted a monetary order in the amount of \$50.00.

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* and is being mailed to both the applicant and the respondent.

Dated: February 07, 2013

Residential Tenancy Branch

