



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent or utilities; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, to the service address noted on the Application, on November 17, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. The Landlord stated that the service address was provided by the Tenant, via email, on November 08, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were sent to the Tenant, via registered mail, on February 05, 2013. The Landlord cited a Canada Post tracking number that corroborates this statement. Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received these documents on February 10, 2013 and I accepted them as evidence for these proceedings.

Preliminary Matter

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In the Application for Dispute Resolution the Landlord clearly indicates he is seeking compensation for 4 months of lost rent, in the amount of \$5,000.00. At the hearing the Landlord indicated that he would like to reduce the amount of the claim for lost rent to \$2,650.00, as he was able to find a new tenant. As this amendment does

not negatively impact the tenant, the Application for Dispute Resolution was amended accordingly.

In the evidence package the Landlord outlined claims for utility costs, cleaning costs, and mailing costs, none of which were mentioned in the Application for Dispute Resolution. I find that proceeding with the Landlord's claim for these particular losses at this hearing would be prejudicial to the Tenant, as the claims were not outlined in the Application for Dispute Resolution and the late notice of the new claims made it difficult for the Tenant to prepare a response to those claims.

I therefore decline to consider the additional claims outlined in the evidence package. In reaching this conclusion I was heavily influenced by the fact that the Landlord filed this Application for Dispute Resolution on November 14, 2012, yet the Tenant did not receive notice of the additional claims until eight days before the hearing. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for these particular claims.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on March 01, 2012 and was to continue until February 28, 2013, at which time it was to continue as a periodic tenancy. The agreement declares that the Tenant is required to pay rent of \$1,250.00 by the first day of each month and that the Tenant paid a security deposit of \$625.00.

The Landlord stated that on October 02, 2012 the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent which declared the tenancy would end on October 12, 2012, and that the rental unit was vacated by November 02, 2012.

The Landlord stated that the rental unit was advertised on a popular website on October 30, 2012 and that the advertisement was updated on a regular basis. He stated that the rental unit was re-rented on January 01, 2013, at a monthly rate of \$1,225.00.

The Landlord stated that the Tenant only paid \$1,150.00 of the rent that was due for October of 2012, and he is seeking compensation for unpaid rent, in the amount of \$100.00. He is also seeking compensation for lost revenue for the months of November and December, in the amount of \$2,500.00, and lost revenue for the months of January and February, in the amount of \$50.00.

Analysis

In the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 by the first day of each month. I find that the tenancy was for a fixed term that was to end on February 13, 2013.

In the absence of evidence to the contrary, I find that the Tenant only paid \$1,150.00 of the rent that was due on October 01, 2012. As the Tenant is obligated to pay rent when it is due, I find that the Tenant must pay the Landlord \$100.00 in unpaid rent from October of 2012.

I find that the Tenant did not comply with section 26 of the *Act* when he failed to pay rent when it was due and that his failure to pay rent resulted in a premature end of this fixed term tenancy. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the premature end of the tenancy, pursuant to section 67 of the *Act*.

I find that the Landlord made reasonable efforts to find a new tenant, but that the rental unit remained empty for two months and was re-rented for January of 2013, at a monthly rate that was \$25.00 less than the monthly rent of this tenancy.

In these circumstances, I find that the Tenant must pay \$2,500.00 to the Landlord for the lost revenue he experienced in November and December of 2012, and \$50.00 for the lost revenue he experienced in January and February of 2013.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,700.00, which is comprised of \$100.00 in unpaid rent, \$2,550.00, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$625.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$2,075.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: February 18, 2013

Residential Tenancy Branch

