Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX TUMBLER RIDGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC O

Preliminary Issues

On January 23, 2013, the Landlord submitted additional evidence by faxing 48 pages to the *Residential Tenancy Branch* "evidence fax" number. This evidence included a copy of the original application with the words "AMENDED – JANUARY 18, 2013" written across the top and two additional check marks on the second page of the application to request to keep the security deposit and recover the filing fee.

The *Residential Tenancy Branch Rules of Procedure # 2.5* stipulates that if the original application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application that was subsequently filed must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding [emphasis added].

In this case the Landlord did not file a revised application; rather; they submitted evidence, via the evidence fax machine, which included a copy of the original application they manually amended. Therefore, I cannot amend the Landlord's application during this proceeding to include a claim for damages or to keep the security deposit for damages. That being said, this does not prevent the security deposit being offset against a monetary award issued as a result of the original application, pursuant to section 72(2)(b) of the Act. The Landlord is at liberty to file another application to seek recovery for any damages or losses incurred and not claimed in the initial application.

The Landlord had indicated on their original application, in the notes written in the details of the dispute that they were requesting to recover the cost of the filing fee; therefore, the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by the Landlord's request to amend the application. Based on the aforementioned I approve the Landlord's request to amend the application to

include the request to recover the cost of the filing fee, pursuant to section *64 (3)(c)* of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 14, 2012, by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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 Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: faxed photographs; a statement of events; a written statement; a copy of the application with the words "amended" written across the top; move in and move out condition inspection report forms; and the tenancy agreement. The Tenant did not submit documentary evidence.

The parties entered into a month to month tenancy agreement that began on July 1, 2011. Rent was initially payable on the first of each month in the amount of $1,500.00 and was later increased to $1,564.50 per month. On July 1, 2011 the Tenant paid $725.00 as the security deposit and although a pet deposit was required it was never paid. The parties attended and signed the move in inspection report form on July 1, 2011. The Tenant refused to take part in the move out inspection even after being issued a final written notice of inspection. The Tenant's spouse provided their forwarding address on December 2, 2012 at 8:38 p.m. through a Facebook message.

The Landlord stated that on November 14, 2012 the Tenant informed them of their plans to end their tenancy effective December 1, 2012. Written notice to end the tenancy was received later that same day. The Landlord informed the Tenant of their requirement to vacate the property on the last day of the rental month; however, the Tenant did not vacate the property until December 1, 2012 and did not pay rent for December.

The Landlord appeared at the rental unit on November 30, 2012 at 6:00 p.m. to conduct the move out inspection, as scheduled; however, the Tenants were not finished their move and had not cleaned the unit. The Landlord said she explained overholding and requested that they call when they were completed so they could conduct the move out inspection and retrieve the keys. On December 1, 2012, at 9:23 p.m. the Landlord received a Facebook message stating the Tenants were out of the unit and the keys were left inside. A Notice of final opportunity to attend move out inspection was post to the Tenant's door on December 1, 2012. The Landlord received another Facebook message on December 2, 2012 at 8:38 p.m. with the Tenant's forwarding address.

The Landlord is seeking compensation for loss of December 2012 rent because the Tenant did not provide sufficient notice to end the tenancy and they were not able to re-rent the unit until January 1, 2013.

The Tenant began by stating they vacated the property by November 30, 2012 and not December 1, 2012. He confirmed providing notice to end his tenancy on November 14, 2012.

The Tenant's spouse confirmed that they did not vacate until December 1, 2012. She also acknowledged that the Landlord informed them of overholding and requested that they call to let her know when they were out so they could schedule the inspection. They did not call and instead they sent the Facebook messages as stated by the Landlord.

In closing the Tenant stated that he was not disputing the Landlord's claim for December 2012 rent. He submitted that he attempted to pay the rent but the Landlord refused to accept his payment and decided to come to arbitration instead.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45(1) of the Act stipulates that 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.

In this case the Tenants provided their notice to end tenancy on November 14, 2012, which means their tenancy would not end until December 31, 2012, in accordance with section 45(1) of the Act, as listed above.

The evidence supports the Tenant vacated the property December 1, 2012, without paying the December 1, 2012 rent, as required under section 26 of the Act. This breach caused the Landlord to suffer a loss of rental income for December 2012 in the amount of $1,564.50. Based on the foregoing, I find the Landlord has met the burden of proof to claim a loss and I award them **$1,564.50.**

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Landlord is 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 Tenants' security deposit plus interest as follows:

Loss of December 2012 Rent	$1,564.50
Filing Fee	50.00
SUBTOTAL	$1,614.50
LESS: Security Deposit $725.00 + Interest 0.00	- 725.00
Offset amount due to the Landlord	**$ 889.50**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$889.50.** This Order is legally binding and must be served upon the Tenant. In the event 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: February 20, 2013

Residential Tenancy Branch