



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, and FF

Introduction

This hearing was convened on the landlord's application of January 15, 2013 seeking a monetary award for unpaid rent/loss of rent and utilities and recovery of the filing fee for this proceeding.

As a preliminary matter, the landlord requested an adjournment in order to have time to prepare a response to numerous claims submitted by the tenant in evidence received on February 4, 2013. As that evidence was received after the minimum five day requirement under the Rules of Procedure, as it is not before me, and as, after a hearing a cursory description of it, I found it largely irrelevant to the application before me, I declined the request for adjournment.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent/loss of rent and utilities and filing fee?

Background and Evidence

This tenancy began on October 1, 2012 under a one year fixed term rental agreement set to end on October 1, 2013. Rent is \$1,000 per month due on the first day of the month and the landlord held a security deposit of \$500 paid at the beginning of the tenancy. The landlord submitted the rental agreement into evidence.

During the hearing, the landlord submitted into evidence a copy of the tenants' notice to end tenancy which was dated December 15, 2012 and set an end of tenancy date of January 15, 2013. The landlord replied by letter of January 6, 2013 reminding the tenants that the rental agreement was for a fixed term and that they were liable for the rent until its expiry or until it was rented to new tenants. The tenants vacated on or about January 12, 2013 having paid only half of the rent for January 2013.

The landlord's letter also noted that even if the tenancy had been month to month, notice must be given prior to the rent due date and cannot take effect before the end of the month following.

The landlord also submitted into evidence copies of advertisements of the rental unit on Craigslist beginning on December 17, 2012 and invoices for print advertisements in three local newspapers on January 29, 2013.

In addition, the landlord has submitted copies of invoices for utilities charges for which the tenants were one-third responsible. The tenant stated he had not received a copy of the final invoice, an assertion contested by the landlord.

The tenant stated that he and his co-tenant who was expecting a child had to leave the tenancy early because he said the landlord had turned off the power to the suite for a period, a fact witnessed by his lawyer and a judge, neither of whom had provided documentary evidence.

The landlord vigorously challenged the claim and stated that the residential building had only one breaker box and she would have no idea how to isolate one portion of the system, nor would she use such a tactic.

The tenant stated that the landlord had not been present for a move-out condition inspection, however, I note the landlord's application made no claim for damage to the rental unit and find the point irrelevant.

The tenant stated that there are tenants currently living in the rental unit but has provided no proof of the claim.

Analysis

As a matter of note, due to a lack of corroborating evidence and inconsistencies in the tenant's testimony, I have concluded that there was some cause to question his veracity. For example, while the tenant claimed his family had to leave the tenancy early because the heat was shut off, no such grievance is mentioned in the letter giving the tenants' notice to end the tenancy.

Section 45 of the *Act* stipulates that a tenant's notice to end a fixed term tenancy agreement cannot have an effective date earlier than the end date set by the fixed term agreement.

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the others non-compliance with the rental agreement, then the non-compliant party must compensate the other for that loss, subject to a duty to do whatever is reasonable to minimize the loss.

In the present matter, I find that the tenants must compensate the landlord for the \$500 balance of the rent for January 2013. As the landlord is currently advertising the rental unit in three newspapers and Craigslist, I find that it is possible that she will have new tenants for mid-February 2013. Taking into account that the landlord has made reasonable efforts to find new tenants, I award loss of rent for one-half of the month and grant the landlord leave to reapply if there are further such losses.

As to the claim of unpaid utilities, the landlord submitted invoices for gas and hydro and has made claim for compensation for the tenants' one-third share to January 12, 2013 totalling \$350.09. On examining the invoices and the landlord's calculations, I find this claim is substantiated and it is allowed.

The landlord also requested compensation for carpet cleaning. However, as the application did not indicate a claim for damage to the rental unit, I dismiss this claim.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenants.

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the tenants' security deposit in set off against the amount awarded.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Unpaid rent for January 2013	\$ 500.00
Loss of rent to February 15, 2013	500.00
Unpaid utilities	350.09
Filing fee	<u>50.00</u>
Sub total	\$1,400.09
Less retained security deposit	<u>- 500.00</u>
TOTAL	\$ 900.09

Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$900.09 for service on the tenants.

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 07, 2013

Residential Tenancy Branch

