



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 unpaid rent; 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, at the address noted on the Application, on November 23, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. She stated that this package was returned to her with a notation that it had been unclaimed.

The Landlord stated that the Tenant's ex-husband phoned her on November 12, 2012 and advised her that the Tenant was living with him. She stated that she drove by the address provided by the ex-husband on November 12, 2012 and November 19, 2012 and she observed the Tenant's vehicle parked outside this address on both occasions. On the basis of this information, I find it was reasonable for the Landlord to conclude the Tenant was living at the service address.

In the absence of evidence to the contrary, I find that Application for Dispute Resolution and Notice of Hearing have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. She stated that she mailed copies of the evidence to the Tenant, at the service address, on January 17, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. She stated that this package was returned to her with a notation that it had been refused by the recipient. In the absence of evidence to the contrary, I find this evidence was served to the Tenant in accordance with section 88 of the *Act*, and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; for compensation for damage to the rental unit; 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 stated that this tenancy began on May 15, 2012; that the Tenant was obligated to pay monthly rent of \$1,175.00 by the first day of each month; that the Tenant paid a security deposit of \$587.50; and that the Tenant paid no rent for October of 2012.

The Landlord stated that on October 29, 2012 she posted a Ten Day Notice to End Tenancy on the door of the rental unit, which required the Tenant to vacate the rental unit by November 12, 2012. She stated that the Tenant did vacate the rental unit on November 12, 2012.

The Landlord stated that she began advertising the rental unit on two popular website on October 30, 2012 or November 01, 2012 and that she was able to secure a new tenant for December 01, 2012. She is seeking compensation for any revenue lost in November of 2012.

The Landlord is seeking compensation, in the amount of \$150.00 for cleaning the rental unit and repairing several small holes in the wall. She stated that she spent approximately five hours washing the walls, washing the windows, and discarding personal property left in the rental unit. She stated that she spent approximately another hour repairing small holes which appear to have been made by hanging art.

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 \$1,175.00 by October 01, 2012 and that she did not pay any rent for October. As section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due, I find that the Tenant must pay the Landlord \$1,175.00 in rent for October of 2012.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. In the absence of evidence to the contrary, I find that on October 29, 2012 the Landlord posted a Notice to End Tenancy, served pursuant to section 46 of the *Act*, which declared that the Tenant must vacate the rental unit by November 12, 2012.

As the Tenant did vacate the rental unit on November 12, 2012 in accordance with the Notice to End Tenancy, I find that she was obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. I therefore find that the Tenant must compensate the Landlord for the twelve days in November that she remained in possession of the rental unit, at a daily rate of \$39.17, which equates to \$470.04.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to mitigate the loss of revenue from November of 2012.

In my view, the Landlord may not have suffered any loss of revenue if the Landlord had served the Tenant with a Notice to End the Tenancy on October 02, 2012 and then advertised the rental unit in a timely manner. I find that it is reasonably likely that the Landlord's decision to delay serving the Notice to End Tenancy until October 29, 2012 significantly contributed to the Landlord's inability to find a new Tenant for the entire month of November. I therefore dismiss the claim for lost revenue from November of 2012.

In the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the five hours she spent cleaning the rental unit, at any hourly rate of \$25.00.

Section 37(2) of the *Act* does not require a tenant to repair damage that results from reasonable wear and tear. As most tenants hang art on walls, I find that the holes resulting from hanging art should be considered normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I find that the Landlord is not entitled to compensation for the time she spent repairing minor holes in the wall.

I find that the Landlord's application has merit, and I find 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 \$1,820.04, which is comprised of \$1,645.04 in unpaid rent, \$125.00 for cleaning, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$587.50 in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,232.54. 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 26, 2013

Residential Tenancy Branch

