



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary claim; and to recover the cost of the filing fee from the Tenant.

It was determined that the Landlord mailed the Notice of Hearing documents and copies of her documentary evidence to the Tenant, by registered mail, on January 22, 2013, to the forwarding address the Tenant provided on the Condition Inspection Report. The Landlord provided a copy of the receipt and tracking numbers in evidence. It was also determined that the Tenant sent his documentary evidence by express post on January 27, 2013. The Landlord stated that she received these documents on January 28, 2013.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matter

The Landlord's application filed November 7, 2012, indicates that she is requesting compensation for unpaid rent for the month of November, 2012. During the Hearing, it was determined that the Tenant has paid rent for November, 2012. The Landlord asked that her application be amended to indicate that she seeks unpaid rent for December, 2012, and half of January, 2013.

In addition, the Landlord's Application for Dispute Resolution indicates that she seeks unpaid utilities in the estimated amount of \$110.00, however the Landlord stated that she now has the final bill and the actual outstanding amount is \$100.69. The Landlord stated that the final utility bill was not available until the end of January and that she thought she could not provide it in evidence because she had missed the time limit for providing evidence. I ordered the Landlord to provide me and the Tenant with a copy of the unpaid utility bill by registered mail immediately. The Landlord provided a copy to the Residential Tenancy Branch, along with a copy of the registered mail receipt for the letter sent to the Tenant, on February 6, 2013.

The Landlord did not amend her application prior to the Hearing, however the Tenant was served with the Landlord's documentary evidence which makes it clear that she is seeking this compensation. I find that there is no prejudice to the Tenant in amending the Landlord's application, and in the interest of a speedy resolution to all of the Landlord's claims, I amended the Landlord's application.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue and unpaid utilities?
- May the Landlord apply the security deposit towards partial payment of her monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 18, 2012. The tenancy agreement is a fixed term lease ending on June 14, 2013. Monthly rent was \$1,250.00, due on the 15th day of each month. Rent did not include utilities. The Tenant paid a security deposit in the amount of \$625.00 on May 12, 2012. The Landlord testified that, contrary to the tenancy agreement, rent was paid on the first day of each month.

On September 19, 2012, the Tenant wrote to the Landlord advising that he was ending the tenancy effective November 1, 2012. A copy of the letter was provided in evidence. The tenancy ended on October 31, 2012. The rental unit was re-rented on January 15, 2013. A copy of that tenancy agreement was provided in evidence.

The Tenant testified that he placed 60 or 70 ads on a popular on-line site in order to find a new tenant for the rental unit. He stated that 20 or 30 people came to see the rental unit, but that the Landlord did not accept any of them. The Tenant submitted that the Landlord said that the Tenant would only owe one month's rent as a "penalty". The Tenant submitted that he gave one month's notice and that therefore, he should not have to pay any more rent to the Landlord. The Tenant did not dispute that he owed money for utilities, but stated that he had not yet received a copy of the bill.

The Landlord disputed the Tenant's testimony and stated that she told the Tenant she would try to re-rent quickly, but if she couldn't then the Tenant would be responsible for paying the rent until the end of the term or the date that it was re-rented, whichever first occurred. The Landlord stated that at the end of September she posted ads on the same popular on-line site as the Tenant's ads were posted. She stated that she updated the ads twice and was able to find suitable new tenants on December 15, 2012, who were able to move into the rental unit on January 15, 2013, but for \$50.00 less a month. She testified that she also posted ads on 4 other websites and put up a

notice for rent at the rental property on September 28, 2012. The Landlord testified that the Tenant made efforts, but that the people who he found were not suitable. For example: one woman was unemployed and only received \$1,400.00 a month in benefits, therefore could not afford \$1,250.00 a month in rent; some people did not show up for their appointments; some people refused to agree to a credit check or could not provide references; and some wanted to have pets, but pets are not allowed under the tenancy agreement.

The Landlord seeks a monetary award, calculated as follows:

Loss of revenue for December, 2012	\$1,250.00
Loss of revenue for January 1 – 14, 2013	\$625.00
Difference in rent for January 15 – 31, 2013	\$25.00
Difference in rent for February – May, 2013	\$200.00
Difference in rent for June 1 – 14, 2013	\$25.00
Unpaid utilities	<u>\$100.69</u>
TOTAL CLAIM	\$2,225.69

Analysis

Section 44 of the Act provides the only ways tenancies end in British Columbia, which includes a mutual agreement to end a tenancy. Section 52 of the Act requires a mutual agreement to end a tenancy **must**: be in writing; be signed and dated by the landlord and tenant; give the address of the rental unit; and state the effective date of the notice. Based on the evidence before me, I find that the parties did not have a mutual agreement to end the tenancy.

Section 45 of the Act provides the only ways a tenant can end a tenancy in British Columbia. This was a fixed term tenancy and therefore Section 45(2) applies, which states:

A tenant may end a fixed term 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,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy**, and

(c) 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.

(emphasis added)

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations of tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 7 of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

Based on the evidence provided, I find that the Landlord took reasonable steps to minimize her loss. She advertised the rental unit in a timely manner and ultimately accepted \$50.00 less a month in rent in order to re-rent it.

I further find that the Tenant did not end the tenancy in accordance with the provisions of Section 45(2) of the Act and that the Landlord suffered a loss as a result of the Tenant's failure to comply with the Act.

The Tenant did not dispute that he owes utilities and the Landlord provided sufficient proof of the amount that is owed.

Therefore, I find that the Landlord has established her monetary claim for loss of revenue and unpaid utilities. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of her monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue	\$2,125.00
Unpaid utilities	\$100.69
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,275.69
Less security deposit	<u>- \$625.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,650.69

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,650.69** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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

