



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

During the hearing, the Landlord clarified that the spelling of his address was incorrect and has provided a corrected spelling for the file. The file shall be corrected to reflect this. The Tenant also advised that the mailing address had changed and has provided his new address in Alberta. The file shall also be corrected to reflect the new address of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on October 1, 2012 on a fixed term tenancy ending on June 30, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$775.00 and a combined security and pet damage deposit of \$390.00 was paid.

The Landlord seeks a monetary order for \$3,485.00 which consists of 5 months of rent at \$775.00 per month. The Landlord stated that he was also seeking recovery of postage fees and changing the locks. The Landlord states that the Tenant vacated the rental unit on January 2, 2013 without notice breaching the fixed term tenancy. The Tenant disputes this stating that he vacated the rental unit on January 1, 2013 because they were not satisfied with the tenancy regarding the relationship with the Landlord. The Tenant stated that the Landlord would enter the rental unit without permission. The Tenant has admitted in his direct testimony that he breached the fixed term tenancy by vacating the rental unit and did not provide any notice to the Landlord. The Landlord stated during the hearing that he was able to re-rent the unit as of February 8, 2013 to new tenants. The Landlord has amended his application and seeks recovery of 5 weeks of rent for \$968.75 and the recovery of \$23.90 for newspaper ads.

Analysis

I find based upon the direct testimony of both parties and a copy of the signed tenancy agreement that the Tenant breached the fixed term tenancy by ending it prematurely in January of 2013. The Landlord was able to mitigate any losses by re-advertising and was able to re-rent the unit on February 8, 2013. I find that the Landlord has established a claim for the compensation of \$968.75 for the loss of rental income for the approximate 5 weeks that the rental was empty. The Landlord was also seeking recovery of postage and changing the lock charges.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (postage) is dismissed.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As for the Landlord's claim for lock change fees. The Act provides that the changing of locks is the responsibility of the Landlord unless he provide claim that the change was a

requirement because of negligence/damage caused by the Tenant. On this issue, I find that the Landlord has failed and dismiss this portion of the claim.

As for the monetary claim for \$23.90 for the re-advertising costs for the rental, I find based upon the testimony of both parties that the Landlord suffered this cost for breaching the fixed term lease. The Landlord has been successful in this portion of the claim.

The Landlord has established a monetary claim of 992.65. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$390.00 combined security and pet damage deposits and I grant a monetary order under section 67 for the balance due of \$652.65. This order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$652.65.
The Landlord may retain the security deposit.

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: March 28, 2013

Residential Tenancy Branch

