



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing concerns an application by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from June 15, 2012 to July 1, 2013. Monthly rent of \$1,975.00 was due and payable in advance on the first day of each month.

On May 21, 2012 a security deposit of \$980.00 was collected, however, on May 30, 2012 tenant "SD" orally informed the landlord of the tenants' intention not to proceed with the tenancy. On May 31, 2012 one tenant confirmed this in a follow-up e-mail to the landlord. Subsequently, the tenants sought the return of their security deposit by way of filing an application for dispute resolution. In the result, a hearing was held on October 31, 2012. Pursuant to the decision issued by date of November 19, 2012, the landlord was ordered to repay the tenants' security deposit of \$980.00, and a monetary order was issued in favour of the tenant / applicant to that effect.

Further, in the decision of November 19, 2012 the Arbitrator found, in part, as follows:

I find that a tenancy was formed on May 21, 2012, when the parties signed the tenancy agreement and the Tenants provided a security deposit. Section 44 of the Act provides the only ways a tenancy can end.

The landlord claims that on May 30, 2012 he began advertising for new renters on craigslist, and showed the unit to prospective renters on June 2, 2012. However, he testified that new renters were not found for the unit until effective August 1, 2012. In the result, the landlord seeks compensation for loss of rental income for the period from June 15 to 30, and the entire month of July 2012.

During the hearing there was some controversy around the amount of rent advertised by the landlord when he commenced his search for new renters on May 30, 2012. The tenants claim the rent initially advertised was in excess of \$2,000.00 per month. At one stage during the hearing it appeared that the landlord agreed; however, as the hearing proceeded the landlord stood firm to his claim that after the present tenancy ended, the monthly rent advertised was at all times \$1,975.00. There is no documentary evidence before me of the on-line advertisement(s) at issue.

Finally, the landlord confirmed that rent paid by the current tenants is \$1,975.00.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) 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.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony, I find that notice given by the tenants to end the fixed term tenancy did not comply with the above statutory provisions. I further find that the landlord undertook to mitigate his loss in a timely fashion by advertising for new renters effective from May 30, 2012. Additionally, I find on a balance of probabilities that the rent advertised after this tenancy ended was \$1,975.00, and not ever in excess of that amount.

Following from all of the above, I find that the landlord has established entitlement to compensation in the amount of **\$3,012.50**, which is calculated as follows:

\$987.50: *(\$1,975.00 ÷ 2) loss of rental income from June 15 to 30*
\$1,975.00: *loss of rental income for July*
\$50.00: *filing fee*

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,012.50**. Should it be necessary, this order may be served on the tenant, filed in the 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: March 07, 2013

Residential Tenancy Branch

