



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing in the details of dispute that the Tenants vacated the property without notice and agreed to pay for rent until they found new tenants.

Based on the aforementioned I find the Landlord's intention of seeking to recover money for loss of rent, for a period after the vacated the property, was indicated on the application in the details and it was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore, I amend the application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 17, 2012, by the Landlord to obtain a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee for this application.

The Landlords affirmed that on December 18, 2012, they personally served the female Tenant with copies of their application for dispute resolution, the hearing documents, and their evidence, at her residence. Then on that same day they personally served the male Tenant with the same documents at his place of employment.

The Tenant appeared at the teleconference hearing and confirmed receipt of the hearing documents and evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; calculations for the amount being claimed; and a written agreement signed by the female Tenant on September 23, 2011, agreeing to make payments to the Landlord.

The parties agreed they entered into a written fixed term tenancy agreement that began on August 1, 2011, and was set to expire on February 1, 2012. Rent was payable in bi-weekly payments due on the 1st of 15th of each month for the total amount of \$1,300.00 per month. The Tenants were required to pay a security deposit at a later date but did not pay the deposit.

The Landlords advised that they met with both Tenants on August 1, 2012 to give them the keys to the rental unit. During that first week the Tenant paid \$600.00 towards the August 2011 rent. The Landlords attempted to contact the Tenant to collect the payment due on August 15th however the Tenant failed to return their calls or e-mails. During a telephone conversation mid August 2011 the Tenant informed the Landlords that she could not afford to rent the place.

The Landlords began advertising the rental unit on August 27, 2011 and they attended the rental unit to make sure they could have access. It was at that time that they found Tenants had vacated leaving some of their possessions behind. They continued to try and contact the Tenants and they finally heard back from the female Tenant in an e-mail

on September 3, 2011, when she agreed to make payments to the Landlords for the unpaid rent.

The Landlords said they continued to advertise the unit on the internet and around their town on advertising boards. They reduced the rent and were able to re-rent the unit as of December 1, 2011 for \$1,200.00 per month. They are seeking to recover the four months of rent for August, September, October and November 2011.

The male Tenant confirmed that he signed the tenancy agreement and argued that he broke up with the female Tenant before she had access to the unit. He denies being at the rental unit on August 1, 2011 and claims he never moved into the unit.

In closing, both Landlords stated that they recall the male Tenant being at the rental unit on August 1, 2011 and at no time did he or the female Tenant inform them that they needed to end the tenancy. They did not find out the Tenants had vacated until they attempted to collect the rent that was due on the 15th of the month.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the Landlord with thirty days written notice to end the tenancy effective on a date that is not earlier than the end of the fixed term period.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants

have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Notwithstanding the male Tenant's argument that he did not move into the unit, as co-tenants to this tenancy I find both Tenants ended this tenancy in breach of section 45 of the Act by vacating the unit before the end of the fixed term, without providing the Landlord proper notice, and without paying the rent due as required under section 26 of the Act. The Tenants actions have caused the Landlord to suffer loss of rent in the amount of \$4,200.00 which is comprised of \$600.00 balance owing for August 2011 plus three months at \$1200.00 each (3 x \$1,200.00 for September, October and November 2011). Based on the aforementioned, I find the Landlord has met the burden of proof and I award them **\$4,200.00** for loss of rent up to November 30, 2011.

The Landlord has been successful with his application; therefore I award him recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$4,250.00** (\$4,200.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: March 18, 2013

Residential Tenancy Branch

