



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kandola Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement signed by the parties on January 13, 2013, the year-long fixed term of tenancy is from February 1, 2013 to January 31, 2014. Monthly rent of \$1,050.00 is due and payable on the 31st day of each month. A security deposit of \$525.00 was collected on January 13, 2013.

In her letter to the landlord by date of January 18, 2013, the tenant gave notice to end tenancy, requested the return of her security deposit, and informed the landlord of her forwarding address. Thereafter, the landlord filed her application for dispute resolution on February 8, and the tenant's application was filed on March 1, 2013.

The landlord testified that on-line advertising for new renters in the complex within which the subject unit is located, was continuous following her receipt of the tenant's notice. The landlord testified that new renters were found for the unit effective from March 1,

2013. In the result, further to recovery of the filing fee, the landlord seeks compensation for loss of rental income for February 2013.

During the hearing the tenant claimed her recollection was that the tenancy agreement provided for a month-to-month tenancy, and not a year-long fixed term of tenancy. For her part, the landlord claimed that the particulars in the tenancy agreement, including details around the term of tenancy, were fully filled out at the time when both parties signed the agreement on January 13, 2013.

The tenant also claimed there was a delay in her receipt of a copy of the tenancy agreement.

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

At the outset, the attention of the parties is drawn to particular sections of the Act which appear most relevant to the circumstances of this dispute.

Section 13 of the Act speaks to **Requirements for tenancy agreements**, in part as follows:

13(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Section 16 of the Act speaks to **Start of rights and obligations under tenancy agreement**:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 17 addresses **Landlord may require security deposit**:

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

Section 45 of the Act speaks to **Tenant's notice**. In addition to a number of other detailed provisions set out therein, this section of the Act provides that whether the tenancy is for a fixed term or month-to-month, a tenant cannot give notice to end the tenancy "earlier than one month after the date the landlord receives the notice."

Section 7 of the Act addresses **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, and in consideration of the applicable legislation, my findings around the respective applications are set out below.

I find that the tenant's notice by date of January 18, 2013, ultimately had the effect of ending tenancy on February 28, 2013. I further find that the landlord undertook to mitigate the loss of rental income for February by advertising in a timely manner for new renters. In the result, I find that the landlord has established entitlement to compensation for loss of rental income for February in the amount of \$1,050.00. As the landlord has succeeded with her claim, I find she has also established entitlement to recovery of the \$50.00 filing fee. Total entitlement: **\$1,100.00**.

I order that the landlord retain the security deposit of **\$525.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$575.00** (\$1,100.00 - \$525.00).

As the tenant has not succeeded with her application, all aspects of her application are hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the

landlord in the amount of **\$575.00**. 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: May 02, 2013

Residential Tenancy Branch