



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 hearing concerns the landlord's application 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. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy is from August 1, 2011 to July 31, 2012. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$850.00 is due and payable in advance on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$100.00 were collected. There is no move-in condition inspection report in evidence.

Sometime during the term of tenancy the parties reached an agreement, pursuant to which the \$100.00 pet damage deposit was repaid to the tenant.

By e-mail dated November 21, 2012, the tenant gave notice to end tenancy effective November 30, 2012. Subsequently, the tenant finished vacating the unit on December 3, 2012. There is no move-out condition inspection report in evidence.

The landlord's agent testified that advertising for new renters began in mid-December 2012, and that new renters were found effective from January 1, 2013. The delay in commencement of advertising was mainly the result of the need for cleaning, repairs to minor damage and painting in the unit.

Later, by way of e-mail dated February 22, 2013, the tenant informed the landlord of her forwarding address for purposes of repayment of the security deposit. The landlord then filed an application for dispute resolution on February 28, 2013.

I note that the tenant's surname as it appears on the written tenancy agreement is identical to the tenant's surname used by the landlord on the application for dispute resolution. However, curiously, the tenant's surname appears differently on e-mails sent by her to the landlord's agent. Both surnames are used in this decision.

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

Based on the documentary evidence, the affirmed / undisputed testimony of the landlord's agent, and the relevant legislation, the particular aspects of the landlord's claim and my findings around each are set out below.

\$850.00: loss of rental income for December 2012.

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

45(1) A tenant may end a periodic 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, and

(b) 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 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.

I find that notice to end tenancy given by the tenant does not comply with the statutory provisions set out in section 45 of the Act, as above.

I note that delay in the landlord's commencement of efforts to mitigate the loss of rental income by advertising for new renters, was the result of certain work the landlord's agent claimed was required in the unit before new renters could take possession. However, I also note the absence of comparative results of move-in and move-out condition inspection reports in support of a claim that the tenant was responsible for the cleaning, repairs and painting undertaken by the landlord.

In the result, I find that the landlord has established entitlement limited to **\$425.00**, which is the equivalent of one half month's rent ($\$850.00 \div 2$).

\$25.00: *cost of registered mail.*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. 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, this aspect of the landlord's application is hereby dismissed.

\$50.00: *filing fee.*

As the landlord has achieved a measure of success with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total entitlement: \$475.00 (\$425.00 + \$50.00)

Section 72(2)(b) of the Act provides as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order that the landlord retain the security deposit of **\$425.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$50.00** (\$475.00 - \$425.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$50.00**. 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 01, 2013

Residential Tenancy Branch