



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 was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / 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 attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, neither tenant appeared. Evidence submitted by the landlord includes the Canada Post tracking numbers for the registered mail sent to each tenant, and the Canada Post website informs that both items were "unclaimed by recipient."

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 October 1, 2012 to September 30, 2013. Thereafter, the agreement provides that the tenancy may continue on a month-to-month basis or another fixed length of time. Monthly rent of \$950.00 is due and payable in advance on the first day of each month, and a security deposit of \$475.00 was collected. The agreement provides that electricity (Fortis BC) is not included in the rent.

By way of e-mail dated January 8, 2013, the tenants gave notice to end tenancy. Later, by e-mail dated January 11, 2013, the tenants clarified that the last day of tenancy would be February 15, 2013. Subsequently, rent was paid only to the end of January

and the tenants vacated the unit on January 31, 2013. By e-mail dated February 4, 2013, the tenants informed the landlord of their forwarding address.

After receiving the tenants' notice, the landlord undertook to advertise on-line and in a local newspaper for new renters. In the result, the landlord succeeded in finding new renters effective from March 1, 2013.

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 and the affirmed / undisputed testimony of the landlord, the various aspects of the landlord's claim and my findings around each are set out below.

\$950.00: loss of rental income for February 2013

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

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 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 given by the tenants does not comply with the above statutory provisions. I also find that the landlord undertook to mitigate the loss of rental income by advertising in a timely manner for new renters. As previously noted, new renters were found effective from March 1, 2013. Accordingly, I find that the landlord has established entitlement to the full amount claimed for February 2013.

\$124.66: *electricity for February 2013*

As earlier noted, the tenancy agreement clearly documents that electricity is not included in the rent. Further, documentary evidence submitted by the landlord includes the Fortis BC statement for the period in question. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$26.75: *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 largely succeeded with her application, I find that she has established entitlement to recovery of the full filing fee.

Sub-total: \$1,124.66 (\$950.00 + \$124.66 + \$50.00)

I order that the landlord retain the security deposit of **\$475.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$649.66**. (\$1,124.66 - \$475.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$649.66**. Should it be necessary, this order may be served on the tenants, 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 09, 2013

Residential Tenancy Branch