



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, and FF

Introduction

This hearing was convened on the landlord's application of February 12, 2013 seeking a monetary award for unpaid rent and loss of rent and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on February 18, 2013, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent/loss of rent and filing fee?

Background and Evidence

This tenancy began on June 1, 2012 under a one year fixed term rental agreement set to end on May 30, 2013. Rent was \$1,075 per month due on the first day of the month and the landlord holds a security deposit of \$550 paid at the beginning of the tenancy. The landlord submitted the rental agreement into evidence.

During the hearing, the landlord gave evidence that the tenant had given him notice on January 29, 2013 by email that he was leaving the tenancy two days later on January 31, 2013.

The landlord stated that he had not been able to find new tenants for the rental unit until May 1, 2013 although he acknowledged that he was hampered in that respect because the strata corporation governing the building placed restrictions on the number of rentals permitted. Therefore, he had had to go on a waiting list before becoming eligible to rent again. Consequently, the landlord seeks a monetary award for loss of rent for February, March and April 2013.

Analysis

Section 45 of the *Act* stipulates that a tenant's notice to end a fixed term tenancy agreement cannot have an effective date earlier than the end date set by the fixed term agreement.

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the other's non-compliance with the rental agreement or legislation, then the non-compliant party must compensate the other for that loss, subject to a duty to do whatever is reasonable to minimize the loss.

In the present matter, given the unusual factor of the rental restrictions imposed by the strata corporation, I cannot find that the landlord was able to do whatever was reasonable to minimize the loss as required by section 7(2) of the *Act*. Therefore, I decline to award the full three months' rent claimed.

However, in view of the very late notice at a time of year during which it is particularly difficult to find new tenants, I find on the balance of probabilities that it was reasonable to expect the rental unit to remain vacant for two months.

Therefore, I find that the landlord is entitled to a monetary award for the rent for February and March of 2013.

As authorized by section 72 of the *Act*, I hereby order that the landlord may retain the tenant's security deposit in set off against the loss of rent.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

February rent	\$1,075.00
March rent	1,075.00
Filing fee	<u>50.00</u>
Sub total	\$2,200.00
Less retained security deposit	<u>- 550.00</u>
TOTAL	\$1,650.00

Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,650.00 for service on the tenant.

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

