



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on February 22, 2013 he personally served the tenant with copies of the Application for Dispute Resolution and Notice of Hearing, at the rental unit, in the late afternoon, at the rental unit.

These documents are deemed to have been served in accordance with section 89 of the *Act*; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to loss of rent revenue for March 2013?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The fixed term tenancy commenced on February 2, 2013 and was to end effective April 30, 2013, with the tenant vacating. The landlord has a copy of the signed tenancy agreement; a copy was not supplied as evidence. Rent was \$1,400.00 per month, due on the first day of each month.

On February 25, 2013 the landlord obtained an Order of possession and the tenant vacated as a result of that Order, on February 28, 2013. The effective vacancy date of the Notice ending tenancy was February 21, 2013, but the tenant over-held until the landlord obtained the Order of possession.

The landlord has applied for loss of March 2013 rent revenue in the sum of \$1,400.00.

The landlord has applied to retain the \$660.00 deposit paid.

Analysis

In the absence of evidence to the contrary, I find that despite having been given a Notice to end tenancy for unpaid February 2013 rent, the tenant failed to vacate the rental until the landlord obtained an Order of possession and that the tenant over-held beyond the effective date of the Notice.

I find that this left little time for the landlord to locate a new occupant for March 1, 2013 and that, as a result, the landlord suffered a loss of rent revenue.

The landlord had a responsibility to mitigate the loss he has claimed and in the absence of copies of advertisements offering the home for rent, or any other evidence of mitigation, I find that the landlord is entitled to compensation in the sum of \$700.00 for one-half of March 2013 rent; given the tenant remained in the unit and the landlord could not be sure of the date vacancy would be assured. The balance of the claim for compensation is dismissed.

The landlord is now living in the home, which had been rented while the landlord was away for part of the winter. The landlord did not move back into the home until May 1, 2013.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$660.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$90.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to the filing fee cost.

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 17, 2013

Residential Tenancy Branch

