



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution and their evidence I find the Tenant was properly informed of the Landlord's intent of seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, for the unpaid March 2013 rent. I make this finding in part because the Landlord indicated on his application that he was seeking unpaid rent and lists that rent in his evidence as being for the month of March 2013.

Based on the aforementioned I find the Landlord made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, selecting the box to claim *unpaid rent* instead. Therefore I amend the application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* and removed the request for *unpaid rent*, pursuant to section 64(3)(c) of the Act.

Towards the end of her testimony the Tenant's Agent stated that she would like to request an adjournment for a date when the Tenant would be back in the country. Upon consideration of the evidence already presented to me I found that both parties were well represented at this hearing. Furthermore, there was insufficient evidence to prove the Tenant was prevented from calling into the hearing, regardless of which country she was visiting. Therefore, I denied the request for adjournment, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 12, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties' Agents appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; a 10 Day Notice for unpaid rent issued March 3, 2013; a proof of service document; and a notice of late rent.

The parties confirmed that the Landlord and Tenant entered into a fixed term tenancy agreement that began on December 1, 2012 and was set to switch to a month to month tenancy after three months. Rent was payable on the first of each month in the amount of \$760.00 and on October 29, 2012 the Tenant paid \$380.00 as the security deposit and on December 1, 2012 she paid \$200.00 as the pet deposit.

The Landlord's agent submitted that ten days before the end of February the Tenant sent the Landlord a text indicating she would be vacating the unit as of March 1, 2013. The Landlord responded by informing the Tenant she was required to provide thirty days notice and if she moves out earlier she will be responsible to pay for March 2013 rent. The Tenant vacated the unit and attended the move out inspection on February 28, 2013. The keys were returned to the Landlord and a forwarding address was provided on February 28, 2013.

The Tenant's agent testified that the Tenant sent the text on February 20, 2013 advising that she would be ending the tenancy as of February 28, 2013. She argued that the Tenant was of the opinion that she could end the tenancy at that time because that was the end of the three month lease. The Agent said the Tenant did not understand that the

tenancy would turn into a month to month agreement after the fixed term and the Tenant's copy of the lease was blurry. She confirmed that the Tenant signed the original agreement.

In closing, the Landlord's agent submitted the rental unit remained vacant for March 2013. The unit was re-rented effective April 1, 2013. The Landlord has claimed \$760.00 rent for March 2013 plus a \$25.00 late payment fee for March 2013.

Analysis

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord thirty days written notice to end the tenancy on a date that is not before the end of the fixed term.

In this case I find the Tenant ended the tenancy February 28, 2013, which was the end of the fixed term; however, she did not provide the required thirty days written notice. Therefore, I find the Tenant ended this tenancy in breach of section 45 of the Act which caused the Landlord to suffer a loss of rent for March 2013. Accordingly, I award the Landlord loss of March 2013 rent in the amount of **\$760.00**.

The Landlord is seeking \$25.00 for late payment fees for March 2013; however, there is no provision written in the tenancy agreement that provides for late payment charges. Furthermore, this tenancy ended February 28, 2013, when the Landlord regained possession of the unit; therefore, the Landlord may not make a claim for late payment fees for March 2013, as this tenancy was no longer in effect at that time. Accordingly, I dismiss the Landlord's claim of \$25.00 for late fees, without leave to reapply.

The Landlord has primarily been successful with their application; therefore, I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Loss of March 2013 Rent	\$760.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$810.00
LESS: Security Deposit \$380.00 + Interest 0.00	-380.00
Pet Deposit of \$200.00 + Interest of 0.00	<u>-200.00</u>
Offset amount due to the Landlord	<u>\$230.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$230.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: June 06, 2013

Residential Tenancy Branch

