



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 18, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent; money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord testified that each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 18, 2013, by registered mail. Canada Post tracking numbers were provided in the Landlord's testimony (RW 765759412 CA for A.W. and RW 765759409 CA for M.M.). The Landlord advised that the package for M.M. was delivered; however, the package addressed to A.W. was returned to her marked "unclaimed".

Case law provides that refusal to pick up registered mail does not avoid or prevent service. Based on the submissions of the Landlord I find that the Tenant M.M. was sufficiently served notice of this proceeding and Tenant A.W. is deemed served notice of this proceeding on March 23, 2013, five days after it was mailed, in accordance with section 90 of the Act. As each party has been served notice of this proceeding, I continued with the hearing in the Tenants' absence.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: an advertisement for the unit; an application for tenancy; the tenancy agreement; pet agreement; a returned cheque notice; copies of post dated cheques; e-mails between the parties; and Canada Post tracking information.

The Landlord testified that she entered into a written tenancy agreement with the Tenants which they signed on February 16, 2013. The tenancy was for a fixed term scheduled to begin on March 15, 2013 and switch to a month to month tenancy after September 30, 2013. Rent was payable on the first of each month in the amount of \$1,800.00 and on February 16, 2013 the Tenants provided the Landlord with the following three post dated cheques: (1) \$900.00 dated February 18, 2013, for the security deposit; (2) \$900.00 dated March 15, 2013 for the pet deposit; and (3) \$900.00 dated March 15, 2013 for rent up to March 31, 2013.

The Landlord stated that on February 25, 2013, M.M. called to advise that her spouse had been injured at work and they could no longer afford to pay the rent. The Landlord requested to speak with the Tenant the next day to discuss options and when she called back the Tenant informed her they had put a stop payment on their security deposit cheque. After further telephone conversations and e-mails the Landlord received an e-mail from the Tenant on February 27, 2013, that states “...so as it stands my family and I will not be moving into your home”.

The Landlord advised that she began advertising the unit for rent again on February 27, 2013, as soon as she received the Tenant’s e-mail confirming they would not be moving in. She provided a copy of the advertisement that was placed. She was able to find new tenants that agreed to rent the unit as of April 15, 2013, for a reduced rent. She was not able to re-rent the unit at \$1,800.00 and settled on a lower rent of \$1,650.00 per month.

The Landlord is seeking to recover the lost rental income for March 15th – April 14th, 2013, in the amount of \$1,800.00, plus the \$7.00 returned cheque fee she was charged by her bank, as supported by her evidence.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence.

Upon review of the evidence before me I find the parties entered into a legally binding fixed term tenancy agreement that was scheduled to begin on March 15, 2013. I make this finding in part, because: (a) the parties reached consensus of the terms of the agreement, as indicated by their signature on the agreement; (b) there was consideration as the Tenants paid the security deposit and in return the Landlord was holding the rental unit for their occupation; and (c) the parties had capacity to enter into the tenancy agreement.

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 effective on a date that is not before the end of the fixed term.

Based on the above, I find the Tenants cancelled their tenancy, in breach of section 45 of the Act, which caused the Landlord to suffer a financial loss of rent and additional bank charges. Accordingly, I award the Landlord monetary compensation for loss of rent in the amount of \$1,800.00 plus \$7.00 for bank administration fees for a total amount of **\$1,807.00**.

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

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,857.00** (\$1,807.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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 11, 2013

Residential Tenancy Branch

