



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF, SS

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / recovery of the filing fee / and permission to serve documents or evidence in a different way than required by the Act.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from October 1, 2012 to September 30, 2013. Monthly rent of \$1,275.00 is due and payable in advance on the first day of each month, and a security deposit of \$637.50 was collected.

In February 2013 tenant "KMV" informed the landlord of her wish to vacate the unit. As a result, with the landlord's approval, pursuant to a written agreement "MR" became a sub-tenant for the period from April 1 to September 30, 2013. Ultimately, however, sub-tenant "MR" only lived in the unit for the month of April 2013.

For her part, in April 2013 tenant "JMSL" informed the landlord of her wish to vacate the unit at the end of April 2013, and she facilitated contact between the landlord and potential sub-tenant "RB." The landlord testified that potential sub-tenant "RB" informed the landlord that he was prepared to move into the unit effective June 1, 2013. However, tenant "JMSL" testified to her understanding which is that potential sub-tenant "RB" was prepared to move into the unit effective May 1, 2013. In any event, for

personal reasons which may have been related to work, potential sub-tenant “RB” never actually moved into the unit.

In summary, both original tenants and sub-tenant “MR” had vacated the unit by the end of April 2013, potential sub-tenant “RB” never moved into the unit, rent was not paid for May 2013, and by way of on-line advertising the landlord found entirely new renters for the fixed term from June 1, 2013 to May 31, 2014.

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 testimony, the various aspects of the landlord’s claim and my findings around each are set out below:

\$1,275.00: *loss of rental income for May 2013.*

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

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 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 the fixed term tenancy was not ended by the tenants in compliance with the above statutory provisions. I also find that the landlord undertook to mitigate the loss of rental income for May 2013, by finding new renters in a timely fashion effective from June 1, 2013. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$5.00: *fee assessed for returned rent cheque for May 2013.*

Section 7 of the Regulation addresses **Non-refundable fees charged by landlord**, in part:

7(1) A landlord may charge any of the following non-refundable fees:

(d) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

Following from the above finding related to the tenants' liability for payment of May's rent, and in consideration of the statutory provision set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

\$50.00: *strata move-out fee.*

As the tenants do not dispute this aspect of the claim, I find that the landlord has established entitlement to the full amount claimed.

\$135.45: *carpet cleaning.*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises." Further to the foregoing, as the tenants do not dispute this aspect of the claim, I find that the landlord has established entitlement to the full amount claimed.

\$11.24: *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 application is hereby dismissed.

\$45.00 (3 hours x \$15.00 per hour): *cost of time to prepare for hearing.*

For reasons identical to those set out immediately above, this aspect of the landlord's application is hereby dismissed.

\$75.00 (5 hours x \$15.00 per hour): *cost of time to find new tenant.*

Residential Tenancy Policy Guideline # 4 speaks to "Liquidated Damages." In the absence of a "liquidated damages clause" in the tenancy agreement, this aspect of the landlord's application is hereby dismissed.

\$50.00: *filing fee.*

As the landlord has mainly succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Sub-total: \$1,515.45

I order that the landlord retain the security deposit of **\$637.50**, and I grant the landlord a **monetary order** for the balance owed of **\$877.95** (\$1,515.45 - \$637.50).

The attention of the parties is drawn to Residential Tenancy Policy Guideline #13 which speaks to "Rights and Responsibilities of Co-tenants," and provides in part as follows:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Finally, the attention of the parties is drawn to Residential Tenancy Policy Guideline # 19 which speaks to "Assignment and Sublet."

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$877.95**. 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: September 09, 2013

Residential Tenancy Branch

