



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR FF

Introduction

This hearing was convened in response to an application by the landlord, filed May 21, 2013, for a Monetary Order to recover unpaid rent for July 2012. The application is inclusive of recovery of the filing fee associated with this application.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The burden of proof rests with the applicant (landlord) to prove their claims.

The landlord provided document evidence consisting of a narrative and some e-mails dated 2012 between the applicant and their one-time agent for the rental unit.

The undisputed testimony of the landlord is as follows. The tenancy began November 01, 2011 as a fixed term tenancy ending July 31, 2012. The tenancy ended when the tenant vacated June 30, 2012. Rent of \$2585.00 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1292.50, which the landlord still holds in trust

and it is within 1 year that the tenancy ended. The landlord testified they were overseas when they received e-mail information from the tenant at the end of May 2013 that they were contemplating vacating the rental unit earlier than the fixed term period, and subsequently did so June 30, 2013. The quantum of the landlord's monetary claim is for loss of revenue / rent to the end of the fixed term of July 2012 in the amount of \$2585.00.

Analysis

Based on the undisputed testimony of the landlord I have reached a Decision.

I find there is no specific provision in the Act whereby tenants who vacates before the end date of a fixed term will be automatically held liable for loss of rent revenue for the period remaining in the fixed term. However, **Section 7** of the Act does provide as follows:

7. 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.
- 7(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 landlord did not receive written notice to end the tenancy and was not given certainty by the tenant of their plans to vacate. The tenant vacated the following month and I am satisfied the landlord was not given written notice or sufficient opportunity to mitigate their losses as required by Section 7(2) the Act. As a result, I find the landlord is owed loss of revenue as unpaid rent in the amount of \$2585.00, and is further awarded \$50.00 for their filing fee, for a total award of **\$2635.00**.

Calculation for Monetary Order: The security deposit held by the landlord will be off-set from the award made herein in accordance with Section 72(2) of the Act.

Landlord's award for loss of revenue for July 2012	\$2585.00
Filing fee to landlord for cost of this application	\$50.00
Minus tenant's security deposit (no interest)	-\$1292.50
Total Monetary Award to landlord	\$1342.50

Conclusion

I Order that the landlord may retain the security deposit \$1292.50 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1342.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order is final and binding on both parties.

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 03, 2013



Residential Tenancy Branch

RTB-136

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca