



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to the forwarding address provided by the Tenant.

With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement dated May 8, 2013 that provided that the tenancy would start on May 1, 2013 and end on April 30,

2014. The rent was \$1575 per month payable on the first day of each month. The tenant paid a security deposit of \$787.50.

The representative of the tenant testified that her son stayed in the rental unit for one night only. He experienced problems with bugs. He telephoned his mother (the representative) and she came to Vancouver and assisted him finding another rental unit at a higher price.

On May 24, 2013 the tenant advised the landlord that he was vacating the rental unit because of the bugs. The parties completed the inspection on June 1, 2013. The parties were not able to coordinate a mutually convenient time for May 31, 2013. The landlord testified they hired a pest control contractor. However, the contractor was not able to start the first treatment until June 18, 2013. It takes 3 treatments one week to 10 days apart to complete a full treatment.

The landlord claims loss of rent for the month of June caused by the tenant's failure to give proper notice. The tenant submits the landlord breached a material term in the tenancy agreement (the presence of the bugs) and failed to sufficiently mitigate its loss by the delays in bringing in the pest control contractor.

Normally, where there is a fixed term tenancy the tenant is obliged to pay the rent for the entire unexpired term of the fixed term subject to two limitations:

- Where the landlord breaches a material term of the tenancy agreement and the tenant giving the landlord written notice of the breach and a reasonable opportunity to rectify the breach;
- The Landlord's obligation to mitigate or lessen their loss.

This is a disputed claim. The landlord submits they are entitled to claim for loss of rent pursuant to the fixed term tenancy agreement. The tenant submits the landlord failed to sufficiently mitigate their loss. As the end of the hearing the parties reached a

settlement and they asked that I record the settlement pursuant to section 63(2) as follows:

1. The landlord shall retain the security deposit.
2. This is a full and final settlement and each party releases and discharges the other from all further claims with regard to this tenancy.

As a result of the settlement I ordered that the landlord shall retain the security deposit in full satisfaction of this claim.

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 12, 2013

Residential Tenancy Branch

