



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for liquidated damages; for compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement that began on February 15, 2013; that the Tenant agreed to pay monthly rent of \$750.00; and that the Tenant paid a security deposit of \$375.00.

The Tenant stated that sometime near the end of June of 2013 the Tenant informed an agent for the Landlord that they intended to vacate the rental unit at the end of July; that the agent for the Landlord informed the Tenant that they did not need to provide written notice of their intent to vacate; that sometime during the middle of July they asked the agent for the Landlord if they could remain in the rental unit until August 15, 2013, as they did not take possession of their new home until August 09, 2013; that the agent for the Landlord told the Tenant that they could not remain in the unit in August as he

wished to find new tenants for August; that the Tenant did vacate the rental unit by the end of July; and that the Tenant provided the agent for the Landlord with a forwarding address, in writing, on August 01, 2013.

The Landlord stated that he did not know the Tenant was moving until sometime in early August when his agent informed him that the Tenant had moved; that he is not certain when the rental unit was actually vacated; that he received a forwarding address for the Tenant from his agent in early August of 2013; that the agent for the Landlord advertised the rental unit on his behalf; that the rental unit was re-rented for August 15, 2013; that he does not know if the Tenant asked the agent for the Landlord if the Tenant could remain in the rental unit until August 15, 2013; and that he would have agreed to allow the Tenant to remain in the rental unit until August 15, 2013 if he had known of the request.

The Landlord is seeking compensation, in the amount of \$375.00, for lost revenue for the period between August 01, 2013 and August 14, 2013.

Analysis

I find that the Tenant failed to comply with section 45 of the *Residential Tenancy Act* (*Act*) when the Tenant failed to provide the Landlord with written notice of the Tenant's intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

I find that the absence of written notice prevented the Landlord from entering into a legal tenancy agreement with new tenants until the Tenant vacated the rental. As the Tenant did not vacate the rental unit until the end of July of 2013 and the Tenant had not properly ended the tenancy, I find that the Landlord could not, legally, enter into a new tenancy agreement until July 31, 2013. I therefore find that the absence of written notice did interfere with the Landlord's ability to find a new tenant for August 01, 2013.

Section 7(2) of the *Act* requires a landlord to do whatever is reasonable to minimize a loss whenever a landlord claims compensation for a loss. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant asked the agent for the Landlord if the Tenant could remain in the rental unit until August 15, 2013. I find it would have been reasonable for the agent for the Landlord to agree to this request, given that a new tenant had not yet been found for the rental unit. Had the agent for the Landlord agreed to this request, I find that the Landlord would not have lost revenue for the period between August 01, 2013 and August 14, 2013.

As the Landlord did not take reasonable steps to mitigate the loss of rental revenue for the period between August 01, 2013 and August 14, 2013, I dismiss the Landlord's claim for compensation for this period.

I find that the Landlord's application has been without merit and I therefore find that the Landlord is not entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has not established that he has the right to retain the Tenant's security deposit, the Landlord must return the security deposit of \$375.00. Based on these determinations I grant the Tenant a monetary Order for the amount of \$375.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: November 26, 2013

Residential Tenancy Branch

