



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on August 14, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to 2 addresses. The tenant had given the rental unit address as her forwarding address; then on July 30, 2013 the tenant provided another forwarding address. The landlord sent copies of the Notice of hearing package and evidence to each of these addresses.

The landlord provided the Canada Post tracking number for registered mail to the address provided by the tenant on July 30, 2013. That mail was not returned to the landlord. The landlord had the tracking number for the 2nd hearing package sent to the rental unit address on August 14, 2013; that mail was also not returned to the landlord by Canada Post.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act, on the 5th day after mailing. However the tenant did not appear at the hearing.

Preliminary Matter

As the tenancy ended effective July 30, 2013, the application has been amended to reflect a claim for loss of rent revenue; not unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for loss of August 2013 rent revenue in the sum of \$700.00?

Is the landlord entitled to retain the \$350.00 security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The 1 year fixed-term tenancy commenced on May 1, 2013; rent was \$700.00 per month, due on or before the 1st day of each month. A security deposit in the sum of \$350.00 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord provided a copy of a July 29, 2013 email sent by the tenant indicating she was vacating the next day as the occupants of the lower unit had been causing on-going problems which the landlord had failed to address. This email asked that the landlord send the security deposit to the rental address. The landlord met with the tenant on July 30, 2013 at which point she provided a 2nd forwarding address.

The landlord immediately listed the unit on 3 popular web sites and had considerable interest for the unit. He was able to rent the unit out effective September 1, 2013, for the same rent the tenant had paid. None of the individuals who showed interest were able to move into the unit any earlier than September 1, 2013.

The landlord is claiming the loss of rent revenue for August as the tenant ended the fixed term tenancy without giving the landlord time to better mitigate the loss of rent revenue.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

When the tenant gave notice ending the fixed term tenancy she breached section 45 of the Act. In accordance with section 45 of the Act, a tenant may only end a fixed term tenancy if the landlord has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable period after written notice is given by the tenant.

The tenant's written notice ending the tenancy did make allegations against the occupants of the lower unit, but the tenant did not supply any evidence for this hearing that those concerns had previously been placed in writing and given to the landlord. There was no evidence before me that the tenant had taken any steps that would have allowed her to end the fixed term tenancy.

Therefore, I find that the landlord is entitled to the loss of August 2013 rent revenue in the sum of \$700.00. I find, on the balance of probabilities that the landlord quickly advertised, made efforts to locate new occupants and that he was able to mitigate the loss of rent revenue beyond August.

I find that the landlord may retain the \$350.00 security deposit in partial satisfaction of the claim.

I find that the landlord's application has merit and that the landlord entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for a balance of \$400.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$700.00 for loss of August 2013 rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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 08, 2013

Residential Tenancy Branch

