



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 16, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenant confirmed receipt of the hearing document but did not receive copies of the Landlord's evidence. The Landlord testified that he wrote an incorrect street name on his registered mail packages that he was sending to the Tenant. The first package was received by the Tenant however, based on the Canada Post tracking information the second package which included his evidence was not delivered and is currently sitting in the Canada Post warehouse. That second package included the Landlord's written submission; e-mails from prospective tenants; an advertisement listing the unit for rent; the Tenant's notice to end tenancy; and the tenancy agreement documents.

Section 3.1 of the *Residential Tenancy Branch* rules of procedure stipulates that the burden of serving the applicant's evidence lies with the applicant. Considering evidence that has not been received by the other party would create prejudice and constitute a breach of the principles of natural justice. In this case the Tenant has not received copies of the Landlord's documentary evidence because of the Landlord making an error when writing the address. Accordingly, I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony pertaining to that evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however,

each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord testified that the Tenant entered into a written fixed term tenancy agreement that was scheduled to begin on September 1, 2013 and end on April 30, 2014. He collected \$700.00 as prepayment for September 2013 rent plus \$700.00 as a security deposit. He indicated that the security deposit of \$700.00 was to be held by him and that \$350.00 would be applied to the October 2013 rent if the Tenant followed through with the tenancy. He stated he began this process because many students agree to rent the unit and then never actually move in.

The Landlord submitted that sometime in early August he received a letter from the Tenant informing him that she would be cancelling her tenancy. She provided her forwarding address in that letter and requested the return of her deposits. The Landlord argued that he advertised the unit on the internet and with a provincial organization but the unit remains empty. He stated that he applied in August for compensation for the full eight months of rent and would amend the application if the unit was re-rented before the hearing.

The Landlord testified that he only provided a copy of the advertisement from the provincial organization because he was not able to print the internet advertisements after they had expired. He indicated that the unit is fully furnished and is located in a resort area with full amenities. He said he primarily rents to students who attend the local university. Therefore, it is very difficult to find a tenant after the beginning of September because most students have already found accommodations for the full school year.

The Tenant testified that she first saw the unit advertised on the internet. She read from her copy of the tenancy agreement which states the tenancy was to start on September

1, 2013 and end on April 30, 2013. She said she entered into this agreement on March 14, 2013 and understood it to be for upcoming school year ending in April 2014. She paid the Landlord \$1,400.00 as he insisted but then her circumstances changed. She did not get into her program, she lost her job, and she had to care for a family member. She tried to call him at first but when she could not reach him she sent him a letter near the end of July to cancel her tenancy.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord one months notice to cancel the tenancy effective on a date that is not before the end of the fixed term.

In this case, the parties understood they were entering into a tenancy agreement that was to be in effect until the end of the school year, ending April 2014. The Tenant provided notice to end the tenancy before it even began, which I find to be a breach of section 45 of the Act, as listed above.

Based on the above, I find the Landlord has met the burden of proof that he suffered a loss of rent for September 2013. That is to say the Tenant breached the Act when she ended her tenancy by giving the notice in August, and the Landlord has proven that he attempted to re-rent the unit in September 2013. Accordingly, I award the Landlord loss of rent for September 2013 in the amount of **\$700.00**.

Case law has provided that when a landlord is faced with a loss of rent, such as this case, they are required to do everything to minimize their loss. That means, continuing to advertise the unit and even lowering the rent to encourage a new tenant to take the unit and reduce the landlord's loss.

The Landlord's evidence indicates that he advertised the unit on the internet and that he could not provide copies of those advertisements because they had expired. As is the case with most social media internet sites, an advertisement is placed for 20 to 30 days and then it expires. Therefore, based on his own submission, it is reasonable to conclude that the Landlord did not renew these advertisements and is simply claiming for a full eight months of loss of rent, before actually suffering the full loss. Furthermore, there is no evidence to support he has reduced the rent to attract new tenants, or that he has suffered a loss for December through April as rent would not be due yet. Accordingly, I find there is insufficient evidence to prove the four part test, as listed above, for any loss from October 2013 through to April 2014. Therefore, the claim is dismissed without leave to reapply.

Section 19(1) of the Act stipulates that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

In this case I find the Landlord breached section 19(1) of the Act by collecting a full month's rent of \$700.00 as the security deposit.

The Landlord has been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, plus interest and rent prepayment, as follows:

Loss of Rent September 2013	\$700.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$750.00
LESS: Rent prepayment of \$700.00	-700.00
LESS: Security Deposit \$700.00 + Interest 0.00	<u>-700.00</u>
Offset amount due to the TENANT	<u>\$650.00</u>

I HEREBY ORDER The Landlord to return the offset amount of the security deposit of \$650.00 to the Tenant, forthwith.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$650.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with my Order to return the offset balance of the security deposit upon service of this Order, it may be 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 20, 2013

Residential Tenancy Branch

