



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF
MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting the return of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this tenancy which began on July 1, 2013. Monthly rent of \$750.00 was due and payable in advance on the first day of each month, and a security deposit of \$325.00 was collected.

By letter dated July 28, 2013, the tenant gave notice to end the tenancy effective August 31, 2013, and rent was paid to the end of August. A copy of the letter was submitted in evidence. The reason for ending tenancy is described in the tenant's letter as follows:

...as you know my daughter is having a baby in the next few weeks and your basement suit[e] has lots of cockroaches in it.

The agent representing the landlord disputes that the tenant's letter was given to the landlord. Rather, the agent claims that as notice to end tenancy was given verbally in August, insufficient notice was given. As it was not until October 1, 2013 when new renters were found, the landlord seeks loss of rental income for September 2013.

It appears that the tenant's forwarding address was not provided in writing until such time as the tenant served the landlord with his application for dispute resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act speaks to **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.

(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.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the tenant's written notice to end tenancy by date of July 28, 2013, was given to the landlord before the end of July 2013, and is therefore in compliance with the Act. Even if I am wrong, there is no evidence before me of any efforts the landlord may have undertaken to mitigate the loss of rental income for September 2013 after receiving notice from the tenants. In the result, I find that the landlord has failed to meet the burden of proving entitlement to compensation reflecting the loss of rental income for September 2013, and this aspect of the application is dismissed. As the landlord has

not succeeded with the main aspect of the application, the application to recover the filing fee must also be dismissed.

I find that the tenant's forwarding address was not provided in writing to the landlord until the landlord received the tenant's application for dispute resolution. Accordingly, the parties are instructed as follows:

The landlord will be deemed to have received this decision on December 23, 2013. The landlord will have 15 days from that date to deal with the security deposit, pursuant to the provisions set out in section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

In the meantime, the tenant's application for return of the security deposit is dismissed with leave to reapply, and the tenant's application to recover the filing fee is dismissed.

Conclusion

The landlord's application is hereby dismissed in its entirety.

The tenant's application for a monetary order reflecting the return of the security deposit is hereby dismissed with leave to reapply. The tenant's application to recover the filing fee is hereby dismissed.

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: December 16, 2013

Residential Tenancy Branch

