



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed September 5, 2013: MNDC; MNR; MNSD; FF

Tenant's application filed September 28, 2012: MNSD; FF; O

Introduction

This Hearing was scheduled to consider cross applications. The Landlord seeks a monetary award for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the pet damage deposit or security deposit; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of all or part of the security deposit; "other" orders; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with her Notice of Hearing documents and copies of documentary evidence on September 5, 2013, by registered mail. The Landlord served the Tenant with a second package of documentary evidence on November 6, 2013, by registered mail.

It was also determined that the Landlord received the Tenant's Notice of Hearing documents by express post, sent September 9, 2013.

Preliminary Matters

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

Issues to be Decided

- Is the Landlord entitled to a monetary award for loss of revenue for the month of September, 2013?
- Is the Tenant entitled to return of the security deposit?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence, which was signed by the parties on August 19, 2013. This tenancy was to begin on September 1, 2013, and continue on a month-to-month basis thereafter. Monthly rent was \$1,350.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$200.00 on August 19, 2013.

On August 20, 2013, the Tenant sent the Landlord an e-mail, indicating that she had changed her mind and was not going to move into the rental unit. The Landlord asked the Tenant to put her notice to end the tenancy in writing. The Landlord received written notice to end the tenancy on August 22, 2013, a copy of which was provided in evidence.

The Landlord returned the \$200.00 pet damage deposit to the Tenant at the end of August, 2013.

The Landlord gave the following testimony:

The Landlord stated that she attempted to re-rent the rental unit for September 1, 2013, but was not successful in re-renting it until November 1, 2013. The Landlord provided copies of on-line advertisements in evidence.

The Tenant gave the following testimony:

The Tenant stated that she attempted to get the Landlord's agreement to cancel the tenancy agreement. She stated that the Landlord posted on-line ads for the rental unit after the Tenant sent her an e-mail on August 20, 2013, which was before she gave her notice in writing.

The Tenant submitted that she had not received the keys to the rental unit and did not ever live there, and therefore she did not owe rent to the Landlord.

Analysis

Regarding the Landlords' Application:

This is the Landlord's claim for loss of revenue for September therefore the Landlord has the burden of proof to establish her claim on the civil standard.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony of both parties, I find that they entered into a tenancy agreement on August 19, 2013, and therefore a tenancy was formed when the agreement was signed. Section 45 of the Act states that a tenant may end a month-to-month tenancy by providing notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is due under the tenancy agreement.

Section 52 of the Act requires a notice to end tenancy to be in writing and to be signed by the tenant or landlord.

Section 68 of the Act provides that an incorrect end of tenancy date is deemed to automatically correct to the earliest date that complies with the Act. In this case, the

Tenant did not provide written notice to end the tenancy until August 22, 2013, and therefore the earliest date that the tenancy could end was September 30, 2013. I find that the Landlord took immediate steps to mitigate her loss by attempting to re-rent the rental unit.

Therefore, for the reasons provided above, I find that the Landlord has provided sufficient evidence that she lost revenue as a result of the Tenant's actions contrary to the provisions of the Act, and that the amount required to compensate the Landlord is \$1,350.00 (one month's rent).

Further to the provisions of Section 72(2) of the Act, the Landlord may apply the security deposit in partial satisfaction of her monetary award.

The Landlord has been successful in her Application and I find that she is entitled to recover the **\$50.00** filing fee from the Tenant.

Regarding the Tenant's Application:

The security deposit has been extinguished and therefore the Tenant's application is dismissed without leave to reapply.

Monetary Award for the Landlord:

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Loss of revenue for September, 2013	\$1,350.00
Recovery of filing fee	\$50.00
Less security deposit	<u>-\$675.00</u>
TOTAL	\$725.00

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$725.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The Tenant's application is dismissed without leave to reapply.

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 11, 2013

Residential Tenancy Branch

