



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NYSTAR DEV. CORP. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 10, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is there a loss or damage and if so how much?
2. Is the Landlord entitled to compensation for the loss or damage and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2011 as a fixed term tenancy with an expiry date of February 28, 2012 and then continued on a month to month basis. Rent was \$1,510.29 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on February 5, 2011. The Landlord said the Tenant gave him notice on August 18, 2013 that the Tenant was moving out of the unit on August 31, 2013.

The Landlord said that the Tenant moved out on August 31, 2013 and did not pay the September, 2013 rent. The Landlord continued to say because the Tenant did not give him proper notice to end the tenancy and he was unable to rent the unit until October 1, 2013 the Tenant is responsible for the September rent of \$1,510.29. The Landlord said he advertised the rental unit as soon as he was notified the Tenant was moving out and

he showed the rental unit many times in September, 2013. The Landlord said he rented the unit on October 1, 2013.

Further the Landlord requested to retain the Tenant's security deposit of \$700.00 as partial payment of the September, 2013 rent and the Landlord asked to recover the filing fee of \$50.00.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a period tenancy with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord. In this situation the Tenant gave the Landlord notice to end the tenancy by text message on August 18, 2013 for August 31, 2013. The effective vacancy date of a notice given on August 18, 2013 is correctly September 30, 2013.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$1,510.29 for September, 2013. As the Landlord was not able to rent the unit until October 1, 2013; I award the Landlord \$1,510.29 as lost rental income for September, 2013.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 1,510.29
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,560.29
Less:	Security Deposit	\$ 700.00
	Subtotal:	\$ 700.00
	Balance Owing	\$ 860.29

Conclusion

A Monetary Order in the amount of \$860.29 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 07, 2014

Residential Tenancy Branch