



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OM'AX REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, 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 November 26, 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 with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on January 1, 2013 as a fixed term tenancy with an expiry date of December 31, 2013. Rent was \$3,750.00 per month payable in advance of the 31st day of each month. The Tenant paid a security deposit of \$1,875.00 on November 10, 2012.

The Landlord said that the Tenant moved out of the rental unit in April, 2013 and there is unpaid rent of \$13, 230.00 owed for the remaining time of the fixed term tenancy. The fixed term tenancy agreement had an expiry date of December 31, 2013. The Landlord said he did a move out condition inspection report with the Tenant in April, 2013 and the Landlord said at that time he spoke with the Tenant and the Tenant understood he was responsible for the rent until the expiry date of December 31, 2013 on the tenancy agreement.

The Landlord continued to say that he told the Tenant he would try to rent the unit to another tenant and any rent paid would come off the rent the Tenant was responsible for. The Landlord said he had some short term tenants starting on June 29, 2013 and then on October 11, 2013 the Landlord serviced the Tenant with a 10 Day Notice to End Tenancy for Unpaid rent dated October 11, 2013 by registered mail. The Tenant said they did not receive the 10 Day Notice to End Tenancy for unpaid rent. The Landlord said he sent it by registered mail and the Landlord provided a tracking number for the mail package containing the 10 Day Notice to End Tenancy. The Tenant said he did not receive the 10 Day Notice to End Tenancy in the mail and he had not seen it until he received the Landlord's hearing package. A search of the Canada Post tracking web site showed no results for the tracking number the Landlord gave for the service of the 10 Day Notice to End Tenancy for unpaid rent.

The Landlord continued to say he believes the Tenant is responsible for the rent up to the expiry date of the tenancy agreement, December 31, 2013, less the short term rentals that the Landlord put into the rental unit. The Landlord said the Tenant has a total unpaid rent of \$13,230.00.

The Tenant said he gave the Landlord 60 days notice that they were moving out of the rental unit in April, 2013, he paid the April, 2013 rent and they completed and signed a move out condition inspection report in which the Tenant said he gave up his security deposit of \$1,875.00 to go towards rent. The Tenant said they moved out of the rental unit on April 10, 2013. The Tenant said he thought the tenancy was over and he did not hear from the Landlord again until he received the Landlord's hearing package in December, 2013. The Tenant said what the Landlord has applied for is wrong and he does not believe he owes the Landlord anything.

Further the Tenant said he sent a potential tenant to the Landlord and he believes people were living in the unit after he moved out.

Both parties said there was no written mutual agreement to end the tenancy and the move out condition inspection report was not included in either the Landlord or Tenant's evidence packages.

The Tenant said in closing that he signed a move out condition inspection report, he called the Residential Tenancy Branch and was told if he gave 60 days notice and the Landlord had other tenants then he was not responsible for the rent to the expiry date of the fixed term tenancy agreement. The Tenant said from his point of view the tenancy ended April 30, 2013 and there is no unpaid rent.

The Landlord said in closing that the tenancy agreement is a fixed term agreement ending December 31, 2013 so the Tenant is responsible for the rent until December 31, 2013. As well the Landlord said he advertised the unit for rent on 4 web sites and completed a number of short term rental agreements with other tenants to live in the unit over the time period of June 29, 2013 to December 31, 2013. The rent the Landlord

collected from the short term tenancies is deducted from the total rent owing from May to December, 2013. The Landlord said the Tenant has unpaid rent of \$13,230.00.

Further the Landlord requested to recover his filing fee of \$100.00.

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 fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be written with notice at least one month prior to the date that rent is payable or with a signed written agreement between the landlord and the tenant.

Further section 7.2 of the Act says 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.

I accept the Landlord's testimony and evidence that the tenancy agreement is a fixed term contract with an expiry date of December 31, 2013. As well I accept both parties' testimony that a move out condition inspection report was signed in April, 2013. It appears that the Tenant perceived this report as an agreement to end the tenancy and the Landlord saw it as only a condition inspection report and it did not end the Tenant's responsibility for the tenancy.

Further the Landlord said that he entered into a new tenancy agreement with a new tenant for the rental unit on June 29, 2013 and then again with a number of other short term tenants until December 31, 2013. As these tenancy agreements were with the Landlord and not the Tenant it indicates that the Landlord had control and possession of the rental unit on or before June 29, 2013. The previous Tenant was not part of the new short term tenancy nor had the Tenant agreed to these tenancies therefore when the Landlord entered into these new tenancy agreements the tenancy with the previous Tenant ended and the previous Tenant's responsibility for the rental unit ended on June 29, 2013.

Consequently I find the Tenant is responsible for the unpaid rent for May, 2013 in the amount of \$3,750.00 and for the unpaid rent from June 1, 2013 to June 28, 2013 in the amount of \$3,625.00.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 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:	\$ 7,375.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$7,475.00
Less:	Security Deposit	\$ 1,875.00
	Subtotal:	\$ 1,875.00
	Balance Owing	\$ 5,600.00

Conclusion

A Monetary Order in the amount of \$5,600.00 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 13, 2014

Residential Tenancy Branch