



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On September 06, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On November 14, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that the Landlord's Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were mailed to the Tenant on September 10, 2013. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceeding.

The Tenant stated that the Tenant's Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were mailed to the Landlord sometime in mid-November of 2013. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceeding.

The Landlord submitted additional documents to the Residential Tenancy Branch on December 11, 2013. She stated that copies of these documents were delivered to the Tenant's service address on December 11, 2013. The Tenant stated that she has not received these documents. As the documents were not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and the

Tenant did not acknowledge receipt of the documents, they were not accepted as evidence for these proceeding.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue and for the moving costs?

Should the security deposit be retain by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2013; that the rental unit was furnished; that they had a written tenancy that declared the tenancy was for a fixed term that ended on March 31, 2014; that the Tenant agreed to pay monthly rent of \$2,350.00 by the first day of each month; that the Tenant paid a security deposit of \$2,350.00; that \$1,175.00 of that security deposit was applied to rent for August of 2013; that the Landlord has not returned any of the remaining \$1,175.00 security deposit; and that the Tenant did not provide the Landlord with written authorization to retain any portion of the remaining security deposit.

The Landlord and the Tenant agree that the Tenant provided the Landlord with written notice of the Tenant's intent to end the tenancy on August 31, 2013; that the rental unit was vacated on, or before, August 31, 2013; and that the Tenant provided the Landlord with her forwarding address, in writing, when the notice to end tenancy was served.

The Landlord is seeking compensation for lost revenue for the period between September 01, 2013 and December 31, 2013, in the amount of \$2,200.00. The Landlord stated that she began advertising the rental unit on July 30, 2013 or August 01, 2013; that she advertised it on two popular websites; that she simultaneously advertised it for rent as a furnished unit, for \$2,350.00, and as an unfurnished unit, for \$1,800.00; that she received no responses to her advertisement for a furnished unit, so she elected to rent it out as an unfurnished unit.

The Tenant submitted advertisements of rental units which she contends are comparable to this unit, which were offered for rent for less than this unit. She contends that the Tenant was charging too much for the rental unit.

The Tenant stated that the tenancy was ended due to a variety of deficiencies with the rental unit. She was advised that a tenant only has the right to prematurely end a fixed term tenancy as a result of deficiencies if the tenant has provided the Landlord with written notice of the deficiencies prior to ending the tenancy. As the Tenant did not provide the Landlord with written notice of any deficiencies prior to ending the tenancy, the Tenant was not permitted to discuss the alleged deficiencies during the hearing.

The Landlord also claimed \$369.60 for moving costs. The Landlord stated that she paid \$345.00 to have her furnishings moved from the rental unit, which she needed to do because the new tenant was renting the unit as an unfurnished unit. The Tenant acknowledged that she has been served with a receipt to show that the Landlord incurred this expense.

Analysis

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find, pursuant to section 67 of the *Act*, that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*.

I find that the Landlord acted reasonably and responsibly when the Landlord advertised the rental unit in a timely manner and when the Landlord agreed to rent the unit unfurnished, in an effort to security a new tenant. I find the Landlord's decision to accept reduced rent of \$1,800.00 for the start of the September was reasonable, given that she was facing the prospect of collecting no rent for that month.

I therefore find that the Tenant must pay \$550.00 to the Landlord for the loss of revenue that the Landlord experienced in September, October, November, and December of 2013, which is \$2,200.00. I am unable to award compensation for the remainder of the fixed term of the tenancy, as the Landlord has not made a claim for those losses.

In determining this matter I have placed little weight on the advertisements the Tenant submitted in evidence. Even if those advertisements showed that the Tenant was paying more than market value in rent, the fact remains that the Tenant agreed to pay that rent and that the Tenant was, therefore, obligated to pay the rent. If the advertisements did show that the Tenant was paying more than market rent, this would simply confirm that the Landlord's decision to rent the unit at a reduced rate was reasonable.

I find that the Tenant is also obligated to pay the Landlord the \$345.00 she paid to have her furnishings moved out of the rental unit. I find that this is an expense that the Landlord would not have incurred if the fixed term tenancy had not ended prematurely and therefore the Landlord is entitled to this compensation.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

I find that the Landlord complied with this section by filing the Application for Dispute Resolution on September 06, 2013. I therefore dismiss the Tenant's claim for the return of double the security deposit.

I find that the Tenant's application is without merit and I dismiss her claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,595.00, which is comprised on \$2,200.00 in lost revenue, \$345.00 in moving costs, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to keep the security deposit of \$1,175.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,420.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: December 13, 2013

Residential Tenancy Branch

