



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord on November 15, 2013 under *the Residential Tenancy Act* (the Act) for unpaid rent, and to retain the security deposit in satisfaction of rent revenue losses for tenant's breach of the tenancy agreement.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The tenant and landlord were each represented by their agents. The landlord acknowledged receiving the evidence of the tenant. The landlord provided evidence they sent the tenant document evidence by registered mail on February 03, 2014 and which was received by the tenant. None the less, the landlord and tenant were each given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. At the outset of the hearing the landlord testified they were amending their claim as they were able to mitigate their losses subsequent to filing their claim.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of revenue?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started October 01, 2013 as a fixed term tenancy. Under the tenancy agreement rent in the amount of \$730.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and pet damage deposit from the

tenant in the sum of \$565.00. Prior to moving into the rental unit the parties conducted a mutual move in inspection. The landlord provided a copy of the condition inspection report mutually signed September 30, 2013 indicating the parties agreed the rental unit as satisfactory to both parties. On October 20, 2013 the tenant informed the landlord via e-mail they were vacating the rental unit due to a myriad of issues respecting the rental unit and the residential property with which the tenant was not satisfied, and the tenant subsequently vacated by the end of the same month. On November 01, 2013 the landlord found a letter from the tenant which, amongst other matters, requested the return of their security deposit. As a result of the tenant's departure from the unit the landlord claims they lost rent revenue for the following month of November and December 2013, but were able to re-rent the unit for January 2014. The landlord testified that at the time they received the tenant's e-mail notification, and despite the fixed term of the contractual agreement for the unit, they contemplated accepting the tenant's notification as the tenant's *Notice to End* - as if it complied in all respects with the Act's requirements for such a Notice. On reflection, the landlord testified that they were of this position now and testified they solely sought the unpaid rent for November 2013. The tenant was canvassed their thinking on the landlord's evidence but did not provide their insight nor position on it, other than the tenant was not in a position to financially compensate the landlord in this matter. The tenant re-iterated that the rental unit was unsatisfactory and that they vacated as a result.

Analysis

On preponderance of all the relevant evidence in this matter, I have reached a Decision upon the following findings.

I find the parties entered into a fixed term tenancy agreement and the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with **Section 45(2)** of the Act, which in relevant part states as follows,

Tenant's notice

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

I find the tenant informed the landlord of concerns with the rental unit and their intention to vacate the rental unit; however, the tenant did not provide the landlord with legal notice to end the tenancy in accordance with the Act. Regardless of which, I accept the landlord's testimony that they now treat the tenant's notification as if it were in full compliance with **Section 45(1)** of the Act - to legally end the tenancy November 30, 2013. As a result of which I find the landlord is owed rent for November 2013 in the amount of \$730.00. The landlord is also entitled to recover their filing fee in the amount of \$50.00 for a total award of **\$780.00**.

Conclusion

I Order that the landlord may retain the security deposit and pet damage deposit of this tenancy in the sum of \$565.00, in partial satisfaction of their claim, and **I grant** the landlord a Monetary Order for the balance in the amount of **\$215.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: February 17, 2014

Residential Tenancy Branch

