



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the pet damage deposit and security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the Notice of Hearing and evidence was served on the tenants by a separate registered mail package for each tenant on February 6, 2014 and two registered mail tracking numbers were submitted in evidence. The landlord stated that the registered mail packages were addressed to the tenants at the forwarding address provided by tenant "CM" by text on January 30, 2014. The landlord stated that although he was not sure if tenant "CM" was living at the new address provided by "CM", he was sure that tenant "JM" had received the registered mail package as the registered mail package was signed for and successfully delivered on February 11, 2014 by tenant "JM" which is supported by the registered mail tracking website. Based on the above, I find that tenant "JM" was served in accordance with the *Act*. I am not satisfied; however, that tenant "CM" was served in accordance with the *Act* as the landlord stated that he was not sure if tenant was residing with tenant "JM". The landlord stated that he wished to proceed with the hearing after he was advised during the hearing that if he was successful in proving any portion of his claim resulting in a monetary order, that the only tenant who could be named on the monetary order would be tenant "JM" as tenant "JM" was the only tenant that I have accepted was served in accordance with the *Act*.

Preliminary and Procedural Matters

The landlord testified that the tenants vacated the rental unit on February 15, 2014, and as a result, requested to withdraw his request for an order of possession as the landlord has already received possession of the rental unit back from the tenants. I find that the landlord's withdrawal

of his request for an order of possession does not prejudice the tenants in any way. Furthermore, I note that the landlord was already granted an order of possession in a previous decision dated January 13, 2014, the file number of which has been referenced on the front page of this decision for ease of reference.

Further to the above, in the previous decision dated January 13, 2014, the landlord was ordered to retain both the tenants' security deposit and pet damage deposit. As a result, the landlord's request to retain the tenants' security deposit and pet damage deposit will not be considered, as the landlord has already been ordered to retain both deposits.

At the outset of the hearing, the landlord was advised that the portion of the landlord's application relating to a claim for damages was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because the landlord's application for damages did not provide sufficient particulars of their claim for damages, as is required by section 59(2)(b) of the *Act*.

The landlord is at liberty to reapply for damages; however, is reminded to provide a detailed breakdown of his monetary claim for damages and is encouraged to use the Monetary Worksheet available at www.rto.gov.bc.ca when submitting a monetary claim. The landlord may include any additional pages to set out the details of their dispute in their application, as required. Given the above, I have only considered the landlord's claim for loss of rent for the months of February 2014 and March 2014. The landlord's verbal request to amend his application to include April 2014 loss of rent was denied as the hearing was held on March 24, 2014 which makes his request for loss of April 2014 rent premature.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A fixed term tenancy agreement began on August 31, 2014 and was scheduled to expire on May 31, 2015. Monthly rent in the amount \$2,450.00 was due on the first day of each month.

The landlord is claiming loss of February 2014 rent in the amount of \$2,450.00 and loss of March 2014 rent in the amount of \$2,450.00. The landlord testified that the tenants vacated the rental unit on February 15, 2014. The landlord was granted an order of possession in the previous decision dated January 13, 2014, and in that decision, the Arbitrator found that due to the tenants breaching the *Act*, they were required to vacate the rental unit by November 21, 2013. The landlord has already been granted unpaid rent up to and including the month of January 2014 by way of a previous monetary order.

The landlord stated that when the tenants vacated the rental unit, they left garbage in the rental unit and damaged the rental unit. The landlord stated that he continues to fix the damages that the tenants caused; however he began to show the rental unit to prospective tenants starting on January 29, 2014 as the tenants were willing to allow the landlord to show the rental unit before they vacated. The landlord submitted copies of two advertisements to support that the landlord advertised the rental unit on January 29, 2014 and February 18, 2014. The landlord stated that once per week, he has been updating the rental unit advertisements on two popular websites; however, has been unsuccessful to secure new renters due to the damages in the rental unit, which the landlord stated he has ran out of money to fix.

Analysis

Based on documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Monetary claim of landlord – The landlord has claimed \$2,450.00 for loss of February 2014 rent, and \$2,450.00 for loss of March 2014 rent. The landlord testified that the tenants vacated the rental unit on February 15, 2014 and that no rent was paid by the tenants. In the previous decision dated January 13, 2014, it was found that the tenants breached the *Act* and that the tenants were required to vacate the rental unit by November 21, 2013. I accept the landlord's undisputed testimony that the tenants did not vacate the rental unit February 15, 2014. I find that the landlord provided sufficient evidence to support that he has made attempts to re-rent the rental unit; however, has been unable to re-rent the rental unit as of the date of this hearing. Based on the above, **I find** that due to the tenants breaching a fixed term tenancy, and given the evidence before me, that the landlord has met the burden of proof and is entitled to compensation for loss of rent for the month of February 2014 and March 2014 in the total amount of **\$4,900.00**. This amount is comprised of \$2,450.00 for loss of February 2014 rent, and \$2,450.00 for loss of March 2014 rent.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$5,000.00** comprised of \$4,900.00 in loss of rent, plus the \$100.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$5,000.00**. This order must be served on tenant "JM" and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's application had merit. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$5,000.00 as described above. This order must be served on tenant "JM" and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is at liberty to re-apply for the damages portion of his claim as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 26, 2014

