



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and the pet damage deposit / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony. The tenant did not appear.

The landlord's agent testified that 3 attempts were made to serve the application for dispute resolution and notice of hearing on the tenant by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the 3 pieces of registered mail; the Canada Post website informs that the first 2 were "refused by recipient" and the last 1 was "unclaimed by recipient." I find that the tenant's failure to take delivery or claim the hearing package from the Post Office does not nullify the provisions of section 90 of the Act, which speaks to **When documents are considered to have been received**.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from September 01, 2013 to August 31, 2014. Monthly rent of \$1,275.00 is due and payable in advance on the first day of each month. A security deposit of \$637.50 and a pet damage deposit of \$637.50 were collected. A move-in condition inspection report was completed with the participation of both parties.

By email dated December 18, 2013, the tenant gave notice to end tenancy effective January 01, 2014. As the tenant used an incorrect email address, his original email was later forwarded to the landlord at the correct email address on December 31, 2013.

A partial move-out condition inspection was completed with the participation of both parties on January 03, 2014. The tenant provided his forwarding address on the move-out condition inspection report while the parties were together on this occasion.

In relation to completion of the move-out condition inspection, a "Notice of Final Opportunity to Schedule a Condition Inspection," was posted on the unit door on January 03, 2014. However, the tenant did not subsequently attend the final move-out condition inspection scheduled for January 06, 2014, and the move-out condition inspection report was completed by the landlord in the tenant's absence. In summary, the landlord found a unit in need of cleaning and rubbish removal. Following the completion of these tasks, and in concert with ongoing advertising, new renters were found effective February 01, 2014.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, in part:

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.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant's ending of the fixed term tenancy early does not comply with the Act. I also find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion after receiving notice.

As for compensation, I find that the landlord has established a claim of **\$2,672.19**:

\$475.00: *balance of rent due for December 2013*; **\$25.00**: *fee for late rent*
\$25.00: *administration fee assessed for NSF cheque*
\$1,275.00: *loss of rental income for January 2014*
\$124.94: *utilities for January 2014 [105.05 (Fortis / gas) + \$19.89 (hydro)]*
\$300.00: *liquidated damages / break lease fee*
\$140.00: *unit cleaning*; **\$131.25**: *carpet cleaning*; **\$126.00**: *garbage removal*
\$50.00: *filing fee*

I order that the landlord retain the security deposit and the pet damage deposit in the combined total amount of **\$1,275.00** (\$637.50 + \$637.50), and I grant the landlord a **monetary order** for the balance owed of **\$1,397.19** (\$2,672.19 - \$1,275.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,397.19**. This order may be served on the tenant, filed in the 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: April 30, 2014

Residential Tenancy Branch

