



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 6, 2014. 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 all parties in attendance.

Issues(s) to be Decided

1. Is there losses or damages to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for the loss or damage and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

Although the Tenant had lived in the rental complex previously to this tenancy the Tenant move into this rental unit and this tenancy started on August 1, 2012 as a fixed term tenancy with an expiry date of July 31, 2013 and then it continued on a month to month basis. Rent was \$1,410.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$695.00 on July 4, 2012. The Landlord said the Tenant moved out of the rental unit on January 30, 2014. A move in condition inspection report was completed on July 30, 2012 and a move out condition report was completed on January 30, 2014.

The Landlord said that the Tenant did not give them proper written notice to end the tenancy therefore she is applying for lost rental income of \$1,410.00 for February, 2014. The Landlord said the Tenant gave the Landlord written notice on January 2, 2014 that he was moving out on January 31, 2014. The Landlord submitted evidence that they

gave the Tenant a written notice informing the Tenant that the notice was not correct and that the Tenant may be obligated to pay the February, 2014 rent if the unit was not rented for February, 2014. The Landlord said they advertised the rental unit starting January 2, 2014 on two websites and showed the unit 15 times until they rented the unit starting March 1, 2014. As a result the Landlord said they are requesting lost rental income for February, 2014 in the amount of \$1,410.00.

Further the Landlord said they are requesting \$89.25 for carpet cleaning which they submitted a paid receipt for and \$25.00 for a lost parking tab. As well the Landlord said they are requesting to recover the filing fee of from the Tenant if their application is successful.

The Tenant said he had a good relationship with the Landlord's agents and the Tenant said the tenancy was a good tenancy. The Tenant said that when the tenancy end he agreed to the carpet cleaning and to pay for the parking tab, but he does not think that the Landlord is entitled to the February, 2014 rent of \$1,410.00. The Tenant said he gave the Landlord written notice on January 2, 2014 that he was ending the tenancy on January 31, 2014. The Tenant said he was unaware that this was not proper notice as it gave the Landlord 29 days to rent the unit to a new tenant. The Tenant said he has no problems with the Landlord's agents, but he thought the Landlord is wrong to be asking him for lost rental income due to 2 days short of proper notice to end the tenancy. The Tenant said this kind of action from the Landlord puts financial stress on people who cannot afford to pay rent at two places. The Tenant said this action of the Landlord is wrong.

The Tenant continued to say that he gave notice on January 2, 2014 because January 1, 2014 was a holiday and if he knew the proper dates to give notice he would have done so. The Tenant said as this was a mistake because of lack of knowledge he does not believe the Landlord should be successful.

The Parties were given an opportunity to settle this dispute themselves as the relationship was friendly and the tenancy had been good. The Landlord's agent said they were not authorized to make any settlement agreement.

In closing the Tenant said he believes the Landlord was given enough notice to rent the unit to new tenants and he should not be required to pay the February, 2014 rent. As well the Tenant said he believes this process is wrong if he is found to owe the February, 2014 rent of \$1,410.00.

The Landlord said in closing that the Act says a tenant must give 30 days notice in writing to end a tenancy and it is based on the rent payment date. As well the Landlord said she tried to minimize their loss by advertising and trying to rent the unit as soon as possible.

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 period tenancy not earlier than at least one month prior to the date that rent is payable or with the agreement of the Landlord. The notice to end the tenancy must be in writing. In this situation it means that a notice to end a tenancy given on any day in January, 2014 is effective for February 28, 2014, based on the rent payment date of the 1st of each month.

As both parties agreed written notice to end the tenancy was given to the Landlord on January 2, 2014, therefore the Tenant did not give the Landlord proper notice to end the tenancy on January 31, 2014. The Act indicates that the effective vacancy date for a notice given January 2, 2014 is for February 28, 2014. The Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$1,410.00 for February, 2014 due to improper notice to end the tenancy.

Further as both parties agree that the Tenant is responsible for the carpet cleaning of \$89.25 and the replacement park tab of \$25.00, I award these amounts to the Landlord.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 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:	\$	1,410.00	
	Carpet cleaning	\$	89.25	
	Parking tab	\$	25.00	
	Recover filing fee	\$	50.00	
	Subtotal:			\$ 1,574.25
Less:	Security Deposit	\$	695.00	
	Subtotal:			\$ 695.00
	Balance Owing			\$ 879.25

Conclusion

A Monetary Order in the amount of \$879.25 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: May 20, 2014

Residential Tenancy Branch

