



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction:

On December 16, 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; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

This dispute was the subject of a dispute resolution hearing on March 06, 2014, at which time the matter was dismissed. On March 19, 2014 the Landlord filed an Application for Review Consideration and the Arbitrator conducting that review determined that a review hearing should be convened.

This review hearing was convened to consider the merits of the Landlord's original 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 he mailed the original Application for Dispute Resolution to the Tenant sometime in December of 2013. The Tenant acknowledged receipt of this document.

On December 16, 2013 the Landlord submitted 4 colour photographs to the Residential Tenancy Branch. The Agent for the Landlord stated that black and white photocopies of those photographs were served to the Tenant, by mail, sometime in December of 2013.

The Tenant acknowledged receipt of the photocopies, which he says are unclear. He stated that he can tell that three of the images are of a stove but he can see little other detail. The Agent for the Landlord stated that he also has photocopies of the photographs and he agrees they are likely less clear than the photographs before me.

Residential Rules of Procedure require an Applicant to provide the Respondent with copies of photographs the Applicant intends to rely upon as evidence. In my view, this required the Landlord to serve the Tenant with identical copies of photographs that were submitted to the Residential Tenancy Branch. In these circumstances, the Landlord provided the Tenant with inferior images. As I do not know the quality of the images provided to the Tenant and the Agent for the Landlord acknowledged the images provided to the Tenant have less detail than the photographs before me, I find that Respondent has not been served with identical copies of the photographs before me. I therefore find that these photographs should not be accepted as evidence.

Neither the Landlord nor the Tenant submitted other documents to the Residential Tenancy Branch for this matter.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for cleaning the rental unit; and to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant was required to pay monthly rent of \$725.00 for this tenancy by the first day of each month. The parties agree that the Tenant paid a security deposit of \$362.50 sometime in 2011, although neither is certain of the date.

The Landlord and the Tenant agree that the rental unit was vacated on November 30, 2013. The Tenant stated that he provided the Landlord with a forwarding address, via email, sometime in December of 2013. The Agent for the Landlord stated that he does not recall receiving a forwarding address for the Tenant until June 03, 2014, at which time he received it via email. The Agent for the Landlord does not recall how the Landlord received the Tenant's forwarding address that was recorded on the Application for Dispute Resolution that was filed by the Landlord on December 16, 2013.

The Landlord and the Tenant agree that the Landlord did not have written permission from the Tenant to retain the security deposit and that no portion of the deposit has been returned.

The Landlord and the Tenant agree that sometime in October of 2013 the Tenant verbally advised the Landlord that he intended to move and that on November 01, 2013 the Tenant provided the Landlord with written notice of his intent to vacate on November 30, 2013.

The Agent for the Landlord stated that he began advertising the rental unit on a popular website on November 02, 2013 and that he was not able to find a new tenant until

March 01, 2014. The Landlord is seeking compensation for lost revenue for the month of December.

The Landlord stated that he had 6-7 people expressed interest in the rental unit in November of 2013; that he attempted to contact the Tenant to arrange viewings on 2 or 3 occasions in November; and that he did not follow through with any of those showings because the Tenant did not confirm he could show the unit. The Tenant acknowledged that the Landlord had informed him that he wanted to show the rental unit in November however the Landlord did not follow through with those plans.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The Landlord stated that the floors, the stove, the counter, and a fan needed additional cleaning. The Tenant stated that the rental unit was left in reasonably clean condition. He stated that he never used the oven and that he did attempt to clean the stove top, although it was rusty and old and could not be fully cleaned.

Analysis

I find that the Tenant failed to comply with section 45 of the *Residential Tenancy Act* (*Act*) when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on November 30, 2013 in accordance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, October 31, 2013. I therefore find that the notice to end tenancy provided by the Tenant was one day late.

A landlord may be entitled to compensation for lost revenue if the lost revenue was the direct result of a tenant providing inadequate notice to end a tenancy. I do not find that to be the case in these circumstances.

In these circumstances, the Landlord advertised the rental unit on November 02, 2013 and several people expressed interest in the rental unit. On the basis of the undisputed evidence, I find that the Agent for the Landlord opted not to show the unit to any of the potential renters because he did not have permission from the Tenant to show the rental unit. I find that the Landlord's decision not to show the rental unit in November significantly contributed to the Landlord's inability to locate a new tenant for December. I therefore find that the Landlord failed to mitigate the loss arising from the late notice provided by the Tenant and I dismiss the Landlord's claim for lost revenue from December of 2013.

In reaching this conclusion I was guided by section 29(1)(b) of the *Act*, which authorizes a landlord to enter a rental unit for a reasonable purpose with at least 24 hours written notice. This section authorizes a landlord to show a rental unit at reasonable times with written notice. I therefore find that the Landlord had the right and the ability to show the rental unit without "permission" from the Tenant.

I find there is no evidence to corroborate the Landlord's claim that the rental unit required additional cleaning or to refute the Tenant's claim it was left in reasonably clean condition. As the Landlord has failed to meet the burden of proving the rental unit was not left in reasonably clean condition, as is required by the *Act*, I dismiss the Landlord's claim for compensation for cleaning the unit.

I find that the Landlord's application has been without merit and I dismiss the claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish a monetary claim, the security deposit of \$362.50 must be returned to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$362.50. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: May 22, 2014

Residential Tenancy Branch

