



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified the tenant was originally served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 19, 2014 in accordance with Section 89.

However, the landlord submits that the package was returned as the tenant had moved. The landlord found the tenant's current address and on March 18, 2014 re-served the package to the tenant's current address by registered mail. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony and documentary evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; and for painting the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on February 29, 2013 for a 6 month fixed term tenancy beginning on February 1, 2013 for a monthly rent of \$417.00 due on the 1st of each month.

The landlord submits that on April 5, 2013 the tenant provide a verbal notice of her intent to vacate the rental unit on April 30, 2013. The tenant vacated the unit on April 30, 2013. The landlord testified the rental unit was rented to a new tenant on June 26, 2013. The landlord clarified that she did not seek rent for the full time the unit was vacate despite the fixed term of the tenancy.

The landlord has submitted copies of Condition Inspection Reports recording the condition of the unit at both move in and move out. The move in Report confirms the rental unit had been painted just prior to the tenancy. The move our Report confirms that need for the landlord to repair screw holes in the living room which then required the living room to be painted. The landlord has submitted an invoice for the painting in the amount of \$224.00.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the landlord had failed to comply with a material term of the tenancy or that the tenant ended the tenancy as a result of such a failure, I find the tenant was required to end the tenancy in accordance with Section 45(2). From the landlord's undisputed testimony I find the tenant gave verbal notice on April 5, 2013 of her intention to end the tenancy.

To be compliant with Section 45(2) the tenant would have had to end the tenancy at the end of the fixed term or July 30, 2013. As such, the tenant would be held responsible for the payment of rent until the end of the fixed term, subject only to the landlord's obligation to mitigate any losses.

As such, I find the landlord is entitled to recover lost revenue in the amount of \$417.00.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the Condition Inspection Reports confirm the unit had been freshly painted prior to the start of the tenancy and that there were large holes in the wall of the living room at

the end of the tenancy I find the landlord has established that the tenant failed to comply with Section 37. I also find the landlord has established the value of the costs to repaint the living room through the submission of the invoice.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$691.00** comprised of \$417.00 lost revenue; \$224.00 painting and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 04, 2014

Residential Tenancy Branch

