



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for Breach of an Agreement; for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 15, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord. The landlord testified that the tenant was served on that date and in that manner and has provided a copy of the Canada Post tracking document, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The evidence and testimony provided by the landlord has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord explained that the tenant breached the term of the tenancy by moving out prior to the expiry of a fixed term, and the landlord is not seeking an Order of Possession, but is seeking loss of revenue as a result of the alleged breach. Further, the landlord withdraws the application for a monetary order for damage to the unit, site or property.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for loss of revenue?
- Should the landlord be permitted to keep all or part of the security deposit in satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2013 and was to expire on July 31, 2014 and then revert to a month-to-month tenancy. The tenant was one of 3 tenants residing in the rental unit. A copy of the tenancy agreement has been provided. Rent in the amount of \$1,595.00 per month was payable in advance on the 1st day of each month. During the course of the tenancy, the landlord collected a security deposit from the tenants in the total amount of \$800.00 which is still held in trust by the landlord.

The tenants gave verbal notice to the landlord on or about April 1, 2014 that they couldn't get the courses at the local summer school so they had to move out at the end of April. The tenants were advised by the landlord that they had a fixed term tenancy and were obligated till the end of that fixed term. No written notice was ever received and all of the tenants had vacated the rental unit by April 30, 2014.

On May 7, 2014 the landlord received a text message from the tenant containing the tenant's forwarding address and asking for a copy of the contract and the landlord's mailing address, and stating that the tenant would be filing a claim, however the landlord has not been served with an application for dispute resolution by the tenant or any of the roommates. The landlord responded with his address.

The landlord further testified that he could not afford to leave the rental unit vacant, and it was a bad time of year to get new tenants, so the landlord placed advertisements in Used Victoria and on UVIC Housing. No responses were received from placing the advertisements. The landlord has provided a copy of one of the advertisements, which shows the same rent payable and was posted on April 2, 2014. The landlord testified that new tenants were found by other means, and a new tenancy began on May 1, 2014 but in order to re-rent the landlord had to reduce the rent to \$1,350.00 which is \$245.00 per month less than he would have collected had the tenant not moved out prior to the fixed term. A copy of the new tenancy agreements for the new tenants has been provided. The landlord claims 3 months at \$245.00 per month, or \$735.00, recovery of the \$50.00 filing fee and an order permitting the landlord to keep the security deposit in full satisfaction of the claim.

Analysis

I have reviewed the tenancy agreement and I find that the tenants have entered into a fixed term tenancy to expire on July 31, 2014. I also accept the testimony of the landlord that the tenants moved out of the rental unit on April 30, 2014 and the rental unit was re-rented for May 1, 2014 at a lesser amount of rent. I am also satisfied from the undisputed testimony of the landlord and copy of an advertisement that the landlord did what was necessary to mitigate any loss by placing advertisements on April 2, 2014 for the same amount of rent. I accept the landlord's testimony that he couldn't afford to allow the rental unit to be vacant and had to accept a lower amount of rent to keep it rented.

Where tenants jointly enter into a tenancy agreement, either or all of them are liable for any costs associated with renting. The landlord has served one of the tenants with the application and notice of this hearing, and I am satisfied in the circumstances that the landlord has established a monetary claim for \$735.00.

The landlord testified that the landlord received the tenant's forwarding address by text message on May 7, 2014, and the landlord's first application for dispute resolution was filed on May 6, 2014 and was amended and re-filed on May 14, 2014, which I find is within the time frame that the landlord must apply according to the *Residential Tenancy Act*. Since the landlord has been successful, the landlord is entitled to recovery of the \$50.00 filing fee. I order the landlord to keep \$785.00 of the \$800.00 security deposit in full satisfaction of the claim.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$785.00 of the security deposit in full satisfaction of the claim.

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: September 17, 2014

Residential Tenancy Branch

