



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, 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 provided documentary evidence to confirm the tenant was 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 September 2, 2014 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the 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 lost revenue and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on February 13, 2013 for a 1 year fixed term tenancy beginning on March 1, 2013 for the monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00; and
- A copy of an email from the tenant to the landlord dated August 5, 2013 stating that the tenant is giving her notice to end the tenancy and will move out of the rental unit by August 31, 2013. The email also provides the tenant's forwarding address.

The landlord submits that the tenant did try to pay some of the lost revenue but has not paid out the full amount owed. In addition, the landlord acknowledges they were able to re-rent the unit effective February 1, 2014 but that it rented for \$50.00 less than what the tenant had been paying. The landlord seeks the following amounts:

Month	Amount
October 2013	\$692.50
November 2013	\$1,000.00
December 2013	\$1,000.00
January 2014	\$1,000.00
February 2014	\$50.00
Total	\$3,742.50

The landlord has submitted copies of calendar recordings for the period September 9, 2013 to January 31, 2014 showing the number of viewings completed in attempting to re-rent the unit.

Analysis

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date 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 the 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.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Based on the landlord's undisputed evidence I accept the tenant failed to provide a notice to end tenancy that was compliant with Section 45(2) and that as a result the tenant is responsible for the payment of rent for the duration of the fixed term subject only to the landlord's obligation to take reasonable steps to mitigate their losses.

I am satisfied that the landlord took reasonable steps to re-rent the unit and was unable to find suitable renters until February 1, 2014. I am also satisfied the landlord has established that re-renting the unit required a reduction in the amount of rent, for the last month of the fixed term.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,792.50** comprised of \$3,742.50 rent owed 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: March 03, 2015

Residential Tenancy Branch

