



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and for compensation for damage to the rental unit.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery mail on June 19, 2015. 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 in the Tenant's absence.

Issues(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
3. Is there damage and is the Landlord entitled to compensation for the damage.

Background and Evidence

This tenancy started on December 1, 2014 as a fixed term tenancy with an expiry date of November 30, 2017. Rent was \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 on October 30, 2014. The Landlord said the Tenant gave him written notice on March 24, 2015 that the Tenant was moving out of the rental unit on April 30, 2015. The Landlord said this broke the three year fixed term tenancy agreement.

The Landlord continued to say that the Tenant did not pay \$500.00 of rent for April, 2015 and they have \$900.00 in unpaid utility bills. The Landlord said he submitted a copy of an agreement made with the Tenants dated April 22, 2015 in which they agreed to pay \$500.00 in unpaid rent and \$900.00 in unpaid utilities. The Landlord said the Tenant did not follow through with the agreement they made and the Landlord has not received any payments from the Tenant since she left the unit.

Further the Landlord said he is requesting the May, 2015 rent of \$1,600.00 as he was unable to rent the unit until June, 2015 and so he had lost rental income of \$1,600.00 which he said he should be paid because the tenancy agreement was a fixed term for 3 years. As well the Landlord said he is requesting \$800.00 for his time and labour to get the rental unit ready to rent, for advertising it and showing the unit to potential tenants. The Landlord said he did not submit any receipts or evidence relating to his claim for \$800.00 for his time and labour.

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 fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the written agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent. Further the Tenant signed an agreement stating there was \$500.00 in unpaid rent and \$900.00 in unpaid utilities; therefore I find the Tenant is responsible for the unpaid April, 2015 rent of \$500.00 and utilities in the amount of \$900.00 for a total of \$1,400.00.

In addition I accept the Landlord's testimony that he was unable to rent the unit until June 1, 2015 and therefore the Landlord has lost rental income for the month of May, 2015 in the amount of \$1,600.00. As this tenancy was a fixed term tenancy and the Tenant breached the fixed term agreement; I award the Landlord \$1,600.00 in lost rental income.

With regard to the Landlord's claim of \$800.00 for his time and labour to advertise and re-rent the unit; I find the Landlord has not provided any corroborative evidence to support this claim and therefore I dismiss the Landlord's claim of \$800.00 for time and labor to re-rent the unit.

As the Landlord has been partially successful in this matter, 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 rent arrears. The Landlord will receive a monetary order for the balance owing as following:

| | | |
|-------|---------------------------|-------------|
| | Rent and utility arrears: | \$ 1,400.00 |
| | Lost rental income | \$ 1,600.00 |
| | Subtotal: | \$ 3,000.00 |
| Less: | Security Deposit | \$ 800.00 |
| | Subtotal: | \$ 800.00 |
| | Balance Owing | \$ 2,200.00 |

Conclusion

A Monetary Order in the amount of \$2,200.00 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: November 30, 2015

Residential Tenancy Branch

