



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; MNDC; FF

Introduction

This is the Landlords' Application for Dispute Resolution seeking compensation for damage or loss; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord CN testified that she mailed the Notice of Hearing documents and copies of the Landlords' documentary evidence, by registered mail, to the Tenant on February 9, 2017. CN provided the tracking number for the registered documents. I find that the Tenant was duly served.

The Tenant testified that he left his documentary evidence in the Landlords' mail box on June 2, 2017. CN acknowledged receipt of the Tenant's documents. I find that the Landlords duly served. It is important to note that the Tenant's documents include a Monetary Order Worksheet, indicating that the Tenant seeks return of the security deposit and "half off utilities". The Tenant did not make his own Application for Dispute Resolution and therefore this will not be considered in my Decision. The Tenant is entitled to make his own Application, if he so desires.

Issue(s) to be Decided

Are the Landlords entitled to compensation for loss of revenue for February 15, 2017, to March 14, 2017?

Background and Evidence

This tenancy began on October 15, 2016. The tenancy agreement was a one year term lease, ending October 14, 2017. Monthly rent was \$1,850.00, due on the 15th day of each month. The Tenant paid a security deposit in the amount of \$925.00, which the Landlords are still holding. A copy of the tenancy agreement was provided.

On December ~~31~~ 30, 2016, the Tenant gave the Landlord verbal notice that he would be ending the tenancy early, effective January 31, 2017. **On December 31, 2016, the Tenant gave the Landlord a note that he would be ending the tenancy on January 31, 2017.** The Tenant moved out of the rental unit on January 27, 2017, and paid pro-rated rent for the period of January 15, 2017, to January 31, 2017, in the amount of \$925.00.

The Tenant e-mailed the Landlords his forwarding address on February 1, 2017. The Landlords made their Application for Dispute Resolution on February 7, 2017.

The Landlord CN gave the following testimony:

CN testified that the Tenant requested a meeting with the Landlords on December 30, 2016. The Tenant gave his notice to end the tenancy early. CN stated that she advised the Tenant that the Landlords would require notice effective February 15, 2017, and not January 31, 2017.

The Landlords were surprised that the Tenant moved out of the rental unit early. CN testified that the Landlords listed the rental unit within 24 hours of the Tenant giving his verbal notice. CN testified that there were 5 showings between January 7, 2017, and February 10, 2017, as follows:

- January 7, 2017
- January 8, 2017
- January 15, 2017 (showing cancelled by prospective new occupant)
- January 26, 2017
- February 1, 2017
- February 10, 2017 (new tenancy agreement signed)

CN stated that the Landlords were surprised by the “luke warm” response to their ad, but submitted that it was the end of a holiday period; the weather was not good; and that there had been a recent crack-down on Air B&Bs which flooded the market. The

Landlords were able to re-rent the rental unit, but the new occupant had to give notice to their current landlord, and so was unable to move into the rental unit until the “first week of March, 2017”. The Landlords are seeking the equivalent of one month’s loss of revenue in the amount of \$1,850.00 for the period between January 31, 2017, to February 28, 2017. The new occupant pays \$1,800.00 in rent, but the Landlords are not seeking a monetary award for the \$300.00 loss of revenue (\$50.00 per month for 6 months) to end of the Tenant’s lease.

The Tenant gave the following testimony:

The Tenant stated that the Landlords agreed to end the tenancy early on compassionate grounds, but the parties did not put the agreement in writing.

The Tenant submitted that the Landlords did not try hard enough to re-rent the rental unit for February 1, 2017. He stated that the rental unit was rented to him in just 4 days in October, 2016, and that the vacancy rates for the location of the rental unit and surrounding area were between .1% and .8%.

Analysis

I find there was no mutual agreement between the parties to end the tenancy effective January 31, 2017. Section 44(c) of the Act requires a mutual agreement to end a tenancy to be in writing.

Section 7 of the Act provides:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant did not give written notice to end the tenancy, ~~pursuant to~~ **which complied with** the provisions of Section 52 of the Act, which provides:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Specifically, the Tenant's written notice did not comply with Section 52(a) and (b), as it was not dated and did not provide the address of the rental unit.

The tenancy agreement between the parties is a lease, ending October 14, 2017. I find that the Tenant ended the tenancy early, breaching the tenancy agreement. In such a case, a landlord is required, under Section 7(2) of the Act, to do whatever is reasonable to minimize the loss of revenue. Despite the Tenant breaching the tenancy agreement, and despite the lack of a valid notice to end the tenancy from the Tenant, contrary to Section 52 of the Act, the Landlords made efforts to re-rent the rental unit and I find that those efforts were reasonable.

Section 67 of the Act provides:

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to the provisions of Section 67 of the Act, I allow the Landlords' claim for loss of revenue in the amount of \$1,850.00.

The Landlords have been successful in their Application and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlords may deduct the security deposit from their monetary award.

Conclusion

I hereby provide the Landlords with a Monetary Order for service upon the Tenant in the amount of **\$1,025.00**. This represents the balance due to the Landlords after setting off the security deposit against their loss of revenue (as claimed) and recovery of the filing fee. This Order is enforceable through the Provincial Court of British Columbia (Small Claims 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: July 09, 2017

CORRECTED: August 3, 2017

Residential Tenancy Branch