



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 6, 2017, a Canada post tracking number was provided as evidence of service. The landlord stated that the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed services provision.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy on October 12, 2017, which was to begin on November 1, 2017 and was to expire on October 31, 2018. Rent in the amount of \$780.00 was payable on the first of each month. The tenant paid a security deposit of \$390.00. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that the tenant breached the tenancy agreement as they decided they would not be moving in to the premises. The landlord stated that the tenant was informed that they would be responsible for rent until a new renter was found. Filed in evidence is an email thread between the parties.

The landlord testified that they advertised the rental unit on several popular websites and had a sign posted on the property. The landlord stated that they several showing; however, they could not find a suitable tenant as they did not qualify for multiple reasons.

The landlord testified that they found a new renter on December 19, 2017 and their tenancy commenced on January 1, 2018. The landlord seeks to recover two months of loss of rent in the amount of \$1,560.00. Filed in evidence is a copy of the new renter's tenancy agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The parties entered into a written fixed term tenancy which began on November 1, 2017, even though the tenant did not occupy the rental unit the tenant was still bound by the terms of the tenancy agreement, pursuant to section 16 of the Act.

When the tenant informed the landlord that they would not be taking possession of the unit, they were informed that they would be responsible for loss of rent until a new renter could be found. I find the tenant breached the Act when they ended their tenancy earlier than the Act allowed as the earliest date they could have legally end the tenancy was on October 31, 2018.

I accept the undisputed evidence of the landlord that they mitigated the loss by advertising the rental unit, showing the unit and finding a successful applicant on December 17, 2017, which the new tenancy commenced on January 1, 2018; this release the tenant from their obligation under the Act under their agreement. I find landlord is entitled to recover loss of rent for November and December 2017, in the amount of **\$1,560.00**.

I find the landlord has established a monetary claim of **\$1,650.00**, comprise of loss of rent and the cost of \$100.00 to recover the filing fee.

I order that the landlord retain the security deposit of **\$390.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,270.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 19, 2018

Residential Tenancy Branch