



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TROUT LAKE 1835 HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

A hearing was convened on December 21, 2018 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on December 21, 2018 was adjourned for reasons explained in my interim decision of December 21, 2018. The hearing was reconvened on February 7, 2019 and was concluded on that date.

The Agent for the Landlord stated that on August 31, 2018 the Application for Dispute Resolution and the Notice of Hearing of December 21, 2018 were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing on December 21, 2018. Had the Tenant appeared at the hearing on December 21, 2018 he would have been aware of this adjournment. As the Tenant was served with notice of the first hearing, I find that this hearing should proceed in the absence of the Tenant.

No evidence was submitted.

Preliminary Hearing:

The Agent for the Landlord stated that the Tenant did not pay a security deposit. As a deposit was not paid, it is not necessary to consider the Landlord's application to retain the security deposit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent/lost revenue?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on June 01, 2018;
- the Tenant agreed to pay monthly rent of \$2,000.00 by the first day of each month;
- on July 01, 2018 he received a text message from the Tenant, in which the Tenant told him he had vacated the unit on June 30, 2018;
- no rent was paid for July of 2018;
- as soon as he received the text message from the Tenant he advertised the rental unit on two popular websites; and
- he was unable to re-rent the unit until September 01, 2018.

The Landlord is seeking compensation, in the amount of \$4,000.00, for lost revenue for July and August of 2018 on the basis of the late notice provided by the Tenant.

The Landlord is seeking compensation of \$1,000.00 for a "rental agent fee". The Agent for the Landlord stated that this is the fee the Landlord paid to him to find a new tenant.

The Landlord is seeking compensation of \$600.00 for removing furniture from the rental unit. The Agent for the Landlord stated that he paid an individual \$600.00, in cash, to remove several large items at the end of the tenancy. The Landlord did not submit a receipt for this expense.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or

loss was the result of a breach of the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

On the basis of the undisputed evidence I find that the Tenant served the Landlord with notice to end tenancy, via text message, on July 01, 2018. I therefore find that the Landlord received written notice to end this tenancy on July 01, 2018.

In determining that the Landlord received the Tenant's forwarding address in writing, via text message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photo stating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the text message in which the Tenant provided notice to end the tenancy, I find that the Landlord was sufficiently served with the notice to end the tenancy.

As rent is due by the first day of each month and the Tenant did not give notice to end the tenancy until July 01, 2018 and section 45 of the *Act* requires that the notice to end the tenancy be given on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due, I find that the notice to end tenancy provided by the tenant served to end the tenancy on August 31, 2018.

On the basis of the undisputed evidence I find that the Landlord attempted to re-rent the rental unit in a reasonable manner but was unable to do so until September 01, 2018. I therefore find that the Landlord experienced a loss of revenue that the Landlord would not have experienced if the Tenant had ended the tenancy in accordance with section 45 of the *Act*.

Section authorizes me to order a tenant to pay compensation to a landlord if the landlord experiences a loss as a result of the tenant not complying with the *Act*. I therefore grant the Landlord's application for \$4,000.00 in compensation for lost revenue the Landlord experienced for July and August of 2018.

I find that the Landlord would have incurred the cost of finding a new tenant even if the Tenant had ended the tenancy in accordance with section 45 of the *Act*. I therefore dismiss the Landlord's application to recover the fee the Landlord paid to find a new tenant.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove all of his personal items from the rental unit when he vacated the unit.

In addition to establishing that a landlord incurred a loss, a landlord must also accurately establish the cost of remedying the issue whenever compensation for damages is being claimed. I find that the Landlord has submitted insufficient evidence to establish that the Landlord paid \$600.00 for removing personal property. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that he paid \$600.00 to remove personal

property. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. On this basis, I hereby dismiss the Landlord's claim for the cost of removing personal property.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$4,100.00, which includes \$4,000.00 in lost revenue and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$4,100.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: February 09, 2019

Residential Tenancy Branch