



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0840625 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL –S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and a penalty for breaking the fixed term tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit. The landlord's agent appeared at the hearing; but, there was no appearance on part of the tenant. The landlord's agent testified that the hearing package was sent to the tenant via registered mail on October 18, 2018 using the forwarding address the tenant provided at the move-out inspection. The landlord's evidence was sent to the tenant via registered mail on January 23, 2019. The landlord provided the registered mail receipts, including tracking number, as proof of service.

I was satisfied the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested his monetary claim be reduced so that the claim is limited to \$1,500.00, the amount of the security deposit and pet damage deposit as the landlord does not intend to enforce a Monetary Order. Since the landlord was reducing the claim against the tenant I found the request non-prejudicial and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to recover loss of rent from the tenant?
2. Is the landlord authorized to retain the tenant's deposits in satisfaction of the loss of rent?

Background and Evidence

The parties entered into a seven month fixed term tenancy set to commence on May 1, 2018 and expire on November 30, 2018. The tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. The tenant was required to pay rent of \$1,500.00 on the first day of every month. On September 16, 2018 the landlord received an email from the tenant whereby the tenant notified the landlord she would be vacating the rental unit on September 30, 2018.

The landlord communicated with the tenant to inform her he would try to re-rent the unit for October 1, 2018 but that if the unit was not re-rented the landlord may make a claim against her deposits.

The landlord testified that he started advertising the rental unit on September 16, 2018 and secured a replacement tenant on October 21, 2018 for a tenancy set to commence November 1, 2018 at the monthly rate of \$1,525.00.

The landlord's agent and the tenant performed the move-out inspection report on September 30, 2018 but the tenant did not authorize the landlord to retain her deposits.

The landlord confirmed that the rental unit remained vacant for the month of October 2018 despite efforts to find a replacement tenant due to the tenant's breach of the tenancy agreement and giving short notice; and, the landlord seeks to recover its losses from the tenant.

Analysis

Upon review of the tenancy agreement and the tenant's notice, I find the tenant was bound to fulfill a fixed term tenancy and was not in a position to end the tenancy legally any earlier than November 30, 2018. The tenant ended the tenancy early by vacating the rental unit and the tenant gave the landlord very short notice of her intention to end the tenancy early. Therefore, I find the tenant violated the terms of her tenancy agreement and the Act.

I am satisfied the landlord took reasonable action to mitigate losses and suffered only one month of vacancy. Therefore, I find the landlord entitled to recover its loss of rent from the tenant.

Since the replacement tenant started paying rent of \$1,525.00 on November 1, 2018 I find the landlord's loss of rent for October 2018 is the \$1,500.00 the tenant should have paid, less the increased amount of rent the landlord received for November 2018 (an additional \$25.00). Therefore, I find the landlord entitled to recover loss of rent of \$1,475.00 from the tenant.

The landlord is holding deposits totalling \$1,500.00 and seeks to retain the deposits in full satisfaction of the landlord's losses. Accordingly, I award the landlord \$1,475.00 for loss of rent, plus recovery of \$25.00 of the \$100.00 filing fee the landlord paid for this application.

The landlord has been awarded a total of \$1,500.00 in compensation. The landlord is authorized to retain the tenant's \$1,500.00 in deposits in satisfaction of the amounts awarded other landlord with this decision.

Conclusion

The landlord is authorized to retain the tenant's deposits in full satisfaction of the landlord's losses related to this tenancy.

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: February 08, 2019

Residential Tenancy Branch