



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied for a monetary Order for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that on June 01, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on May 19, 2021 was sent to each Tenant, via registered mail, at the service address noted on the Application. The submitted Canada Post documentation that corroborates this statement. The Landlord stated that the service address used to serve these documents was provided to the Landlord, in writing, on May 17, 2021.

In the absence of evidence to the contrary, I find that the aforementioned documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing. As the documents were properly served to the Tenants, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenants.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent, lost revenue and/or a late fee?

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement, the fixed term of which began on March 23, 2019 and ended on March 31, 2020.

The Landlord stated that the monthly rent of \$1,350.00 was due by the first day of each month and that the Tenants paid a security deposit of \$675.00.

The Landlord stated that on December 11, 2020 the Tenants were provided with a document in which they were offered the opportunity to extend their lease. He stated that on January 31, 2021 both Tenants signed this document, in which they indicated their intent to extend their "lease" by 14 months. The Landlord stated that this document served to renew the fixed term of their lease until February 28, 2022 and that the terms of their original tenancy agreement, including the rent, remained the same.

The Landlord stated that on May 17, 2021 the Tenants verbally informed the Landlord that they were vacating the unit; neither party gave written notice to end the tenancy; and that the Tenants left a forwarding address inside the rental unit, next to the keys to the unit.

The Landlord is seeking unpaid rent for May of 2021, in the amount of \$1,350.00. He stated that no rent was paid for May of 2021.

The Landlord is seeking a late fee of \$25.00 as rent was not paid when it was due on May 01, 2021.

The Landlord is seeking lost revenue for June and July of 2021. In support of this claim the Landlord stated that:

- The rental unit was cleaned after it was vacated on May 17, 2021;
- The rental unit was advertised on several websites;
- The Landlord began advertising the rental unit on those websites on, or about, June 30, 2021;
- The rental unit was re-rented for August 01, 2021;
- The delay in advertising the unit was due to the need to clean and there “could have been damage to the unit”; and
- The Landlord does not advertise units until they are “rent ready”, which means the rental unit is ready for occupancy by a new tenant.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1350.00 by the first day of each month.

Section 26 of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due. On the basis of the undisputed evidence that rent was not paid for May of 2021, I find that the Tenants owe \$1,350.00 in rent for May of 2021.

As the Tenants did not pay rent when it was due on May 01, 2021 and the tenancy agreement requires the Tenants to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of May of 2021.

Even if I concluded that the Tenants had agreed to renew the fixed term of the tenancy until February 28, 2022 and that the Tenants had breached section 45(2) of the *Act* when they ended that fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement, I would dismiss the Landlord’s application for lost revenue for June and July of 2021.

The claim for lost revenue is dismissed because the Landlord has failed to establish that the Landlord properly mitigated the lost revenue experienced in June and July of 2021. Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant’s non-compliance with the *Act*, the

regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord has failed to establish that the Landlord took reasonable steps to minimize their lost revenue by advertising the rental unit in a timely manner. Although the Landlord testified that the rental unit needed to be cleaned prior to being advertised, the Landlord submitted no evidence to establish that it would have taken almost 6 weeks to clean the unit. Had the rental unit been cleaned in a timely manner after it was vacated on May 17, 2021, I find the unit could have been advertised prior to June 01, 2021.

Had the rental unit been advertised prior to June 01, 2021, I find it entirely possible that the unit could have been rented on June 01, 2021, in which case the Landlord would not have experienced any lost revenue.

In considering the claim for lost revenue, I have placed no weight on the Landlord's testimony that there "could have been damage to the unit". As the Landlord gave no evidence of any specific damage to the unit at the end of the tenancy, I cannot conclude that the Landlord was prevented from advertising the rental unit in a timely manner due to damage caused by the Tenants.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,475.00, which includes \$1,350.00 in unpaid rent, a \$25.00 late fee, and \$100.00 for fee paid to file this Application for Dispute Resolution. Pursuant to section 71(2) of the Act, I authorize the Landlord to retain the Tenants' security deposit of \$675.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$800.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: November 21, 2021

Residential Tenancy Branch