



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss, 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me. Neither party called a witness to the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for advertising costs; to compensation for loss of revenue; to compensation for a moving fee; to retain all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Tenants entered into a fixed term tenancy agreement that began on September 01, 2008 and was scheduled to end on August 31, 2009. The parties agree that the Tenants were required to pay monthly rent of \$1,950.00 and that they paid a security deposit of \$975.00 on August 24, 2008.

The Landlord and the Tenant agree that the Tenants sent the Landlord an email, dated February 09, 2009, in which the Tenants indicated their desire to end the lease. A copy of that email and the Landlord's response to the email was submitted in evidence.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

The relevant portion of the Tenants' email to the Landlord reads: "we would like to ask your permission to shorten our lease to 7 months (that is, we would be out of the apartment April 1st)".

The Landlord's email response was, in part, that "This is not a problem". His email, dated February 11, 2009, goes on to say that the Landlord will deduct advertising and cleaning expenses from the Tenant's security deposit. There is no mention that the Tenants will be held liable for loss of revenue if the Landlord experiences a loss of income.

The Landlord argued that his response to the Tenant's email was not meant to imply that the fixed term tenancy would end on April 01, 2009, and that it is unfair to penalize the Landlord on the basis of a misinterpreted email. He stated that he was attempting to assist the Tenants because he understood that one of them was intending on moving to Toronto, but he subsequently learned that neither Tenant moved to Toronto. He argued that the email notification that the tenancy would end did not comply with section 52 of the *Act*.

The Tenant argued that the Tenants' email was clearly a request to shorten the duration of their tenancy agreement. He stated that the Tenants interpreted the Landlord's response to mean that he had agreed to amend the terms of the tenancy agreement. Specifically, the Tenants understood that their fixed term tenancy would end on April 01, 2009. Based on that understanding, one of the Tenants entered into a new lease agreement for a different rental unit and the other Tenant moved in with his parents. He argued that the Tenants would have attempted to sublease the rental unit if the Landlord had not agreed to shorten the duration of their fixed term tenancy.

The Landlord is seeking compensation for loss of revenue, in the amount of \$1,875.00, which he experienced as a result of this tenancy ending on April 01, 2009, rather than August 31, 2009.

The Landlord is seeking compensation for the costs of advertising the rental unit, in the amount of \$677.25. The Landlord submitted receipts that establish he incurred advertising costs of \$541.80. The Tenant agreed to pay \$541.80 in advertising costs.

The Landlord is seeking compensation for a moving fee, in the amount of \$200.00. The Tenant agreed to pay the \$200.00 fee.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Analysis

The parties agree that they entered into a fixed term tenancy agreement for this rental unit that was scheduled to end on August 31, 2009. I find that the parties mutually agreed to amend the terms of this fixed term tenancy in February of 2009. Specifically, I find that the parties agreed that the fixed term tenancy would end on April 01, 2009.

In reaching this conclusion, I was strongly influenced by the emails that were exchanged between the parties in February of 2009. I note that the Tenants' email, dated February 09, 2009, specifically asked to shorten the duration of the tenancy to seven months. I find this request to be clear and direct. I note that the Landlord's email, dated February 11, 2009, indicated that they were agreeing to that request. I also note that the Landlord's agreement was clearly contingent on the understanding that the Tenants would be liable for advertising and cleaning costs.

Although the Landlord contends that his email of February 11, 2009 did not constitute an agreement to shorten the duration of the tenancy, I find that a reasonable person, when reading the exchange of emails, would conclude that the parties had reached an agreement that the fixed term tenancy would end on April 01, 2009.

As I have found that this tenancy ended on the amended expiration date of the fixed term tenancy agreement, I find that the Tenants are not liable for any loss of revenue that the Landlord experienced after the end of the tenancy. On this basis, I dismiss the Landlord's application for compensation for loss of revenue, in the amount of \$1,875.00.

As the Tenant agreed that the Landlord is entitled to compensation for advertising the rental unit, in the amount of \$541.80, I find that the Landlord is entitled to compensation in that amount. I decline to award compensation for advertising expenses in excess of \$541.80, as the Landlord did not submit receipts to establish that he incurred additional expenses for advertising.

As the Tenant agreed that the Landlord is entitled to recover a \$200.00 moving fee, I find that the Landlord is entitled to compensation in that amount.

I decline to award the Landlord compensation for the cost of filing this Application for Dispute Resolution, as it is likely that the parties would have been able to resolve this dispute without assistance if the Landlord had not been seeking compensation for loss of revenue.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$741.80, for expenses that the Tenant agreed is due the Landlord in relation to the end of this tenancy.

I find that the Tenant is entitled to the return of his security deposit, plus interest, in the amount of \$980.19.

After offsetting the two debts, I find that the Tenants are entitled to the return of \$238.39. I therefore grant the Tenant a monetary Order in the amount of \$238.69. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: July 13, 2009.

Dispute Resolution Officer