



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 pet damage deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the Landlord's application for compensation for damage to the walls in the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence at least five days prior to this hearing and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were sent to the Tenant by mail on April 19, 2011. The Tenant acknowledged receiving the documents on April 21, 2011 which is not at least five days prior to the hearing as required by the Residential Tenancy Branch Rules of Procedure. The documents were accepted as evidence for these proceedings. The Tenant declined the opportunity of an adjournment to provide her with additional time to review the evidence.

In the Landlord's evidence package that was received by the Tenant on April 21, 2011 the Landlord included an outline of the monetary claim, which includes monetary claims that were not included in the original Application for Dispute Resolution. At the hearing the Agent for the Landlord applied to amend the original Application for Dispute Resolution to include a claim for loss of revenue from January of 2011, advertising costs of \$75.00, utility charges of \$164.00, an arbitration administration fee of \$50.00, and mailing costs of \$10.02.

I declined the request to amend the Landlord's Application for Dispute Resolution, as the Landlord did not amend the Application for Dispute Resolution in accordance with

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 stipulates that a copy of the amended application must be served on the other party at least five days before the scheduled date of the dispute resolution hearing. In this case the Tenant did not receive any indication that the Landlord was increasing the amount of its monetary claim at least five days prior to the hearing, as the term "at least" is defined by the Residential Tenancy Branch Rules of Procedure. I find that this late notice of the increased claim made it difficult for the Tenant to prepare an adequate response to the new claims and I therefore find that it would be prejudicial to the Tenant to allow the amendment. In reaching the determination to deny the amendment I was influenced, in part, by the fact that the Landlord filed this Application for Dispute Resolution in December of 2010 and the Landlord had ample time to amend the Application in accordance with the Rules of Procedure.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for expenses incurred as a result of a premature end to a fixed term tenancy agreement; to keep all or part of the security deposit and pet damage deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on April 07, 2009 and that on May 01, 2010 the parties entered into a fixed term tenancy agreement that was scheduled to end on April 30, 2011, which required the Tenant to pay monthly rent of \$1,150.00 on the first day of each month.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00 in March of 2009.

The Landlord and the Tenant agree that on October 26, 2010 the Tenant provided the Landlord with written notice of her intent to vacate the rental unit at the end of November of 2010. The parties agree that the Tenant did vacate the rental unit on November 29, 2010.

The Tenant stated that she vacated the rental unit due to deficiencies with the rental unit, specifically that the furnace had not been serviced and the utility costs were higher than the Tenant believed they should be. The Tenant stated that she also vacated the rental unit, in part, because she was having difficulties with another tenant living on the residential property. The Tenant acknowledged that she did not attempt to resolve her concerns regarding deficiencies with the rental unit or with the other occupant through the Residential Tenancy Branch prior to ending the tenancy.

The Agent for the Landlord stated that the rental unit was advertised on fourteen occasions in three local newspapers, it was advertised on a weekly basis on a popular

website, it was advertised on her management company's website, and a "for rent" sign was placed in front of the rental unit.

The Agent for the Landlord stated that the rental unit could not be rented and was eventually listed for sale on January 24, 2011. The Landlord is seeking compensation, in the amount of \$1,150.00 for the loss of revenue the Landlord experienced during the month of December of 2010.

The Agent for the Landlord stated that she has a continuing management contract with the Landlord, which began on September 25, 2008 and is scheduled to end on April 30, 2011, a copy of which was submitted in evidence. This contract clearly indicates that the Landlord must pay a fee of \$250.00 plus GST for the cost of placing a new tenant in the rental unit, which includes advertising costs for four weeks. The Agent for the Landlord stated that with HST, the Landlord has been charged \$280.00 for this service.

The aforementioned management contract also stipulates that the "owner" will be responsible for the cost of lock changes, which are required as per the *Residential Tenancy Act* in between tenancies. The Landlord is seeking compensation, in the amount of \$72.80, for the cost of changing the locks. The Agent for the Landlord stated that the locks were changed because she was not certain all the keys to the rental unit had been returned, given that keys can easily be copied.

The Tenant stated that she returned all keys in her possession to the rental unit and that if the Landlord has concerns about Tenants copying keys the landlord should have a "Do Not Copy" directive stamped on the keys.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 on the first day of each month for the duration of the fixed term of the tenancy, which was to end on April 30, 2011.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I find that the Tenant's concerns with deficiencies with the rental unit or her concerns with the other occupant of the residential complex did not negate her obligation to remain in the rental unit for the duration of the fixed term of her tenancy. In the event that the Tenant believed that the Landlord was not complying with the *Act* in regards to maintaining the rental unit or in the event she believed her right to the quiet enjoyment of the rental unit was being breached, I find that the appropriate remedy was to file an Application for Dispute Resolution. These concerns do not justify her decision to end the tenancy prematurely.

I therefore find that the Tenant must compensate the Landlord for losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to

section 67 of the *Act*. I find that that in spite of reasonable efforts to find new tenants the Landlord experienced a loss of revenue for the month of December of 2010, in the amount of \$1,150.00, and I therefore find that the Tenant must compensate the Landlord for this loss.

On the basis of the testimony of the Agent for the Landlord and the management contract that was submitted in evidence, I find that the Landlord paid the management company \$280.00 to find a new tenant. I find that this was a cost that the Landlord would not have incurred if the Tenant had not prematurely ended this tenancy and I therefore find that the Tenant must compensate the Landlord for this expense.

I find that the Landlord has failed to establish that the Tenant did not return all of the keys to the rental unit at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's suspicion that some keys may not have been returned or that refutes the Tenant's statement that all keys were returned. As the Landlord has failed to establish that the Tenant did not return all keys or means of access to the rental unit that are in her possession or control, as is required by section 37(2)(b), I find that the Landlord is not entitled to compensation for the cost of rekeying the locks to the rental unit.

Section 25 of the *Act* requires landlords to rekey locks at the start of a new tenancy only when the new tenant requests that the locks be rekeyed. As a new tenant has not asked the Landlord to rekey the locks, I find that the Landlord was not obligated to incur the cost of rekeying the rental unit. For these reasons, I dismiss the Landlord's claim for compensation for rekeying the locks.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,480.00, which is comprised of \$1,150.00 for loss of revenue, \$280.00 for the cost of attempting to locate a new tenant, and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that this debt to the Landlord should be offset by the security deposit and pet damage deposit of \$1,150.00 which is being held by the Landlord, pursuant to section 72(2) of the *Act*. Based on these determinations I grant the Landlord a monetary Order for the balance of \$330.00. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: April 27, 2011.

Residential Tenancy Branch