



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPAN CANADA ENT. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 16, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to keep all or part of the security deposit as partial satisfaction of their claim.

The Landlord's Agent / translator (hereinafter referred to as Landlord) provided affirmed testimony that each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 16, 2013, by registered mail. He stated that he confirmed on the Canada Post website that the package sent to R.S.'s home was signed for on July 17, 2013. Based on the submissions of the Landlord I find the Tenant R.S. was sufficiently served notice of this proceeding while the second responded (the named corporation) is deemed served notice of this proceeding on July 21, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenants' absence.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord provided a copy of the signed fixed term tenancy agreement which stipulates that the tenancy began on March 1, 2013, and was scheduled to end on August 31, 2013. Rent was payable on the first of each month in the amount of \$2,600.00 and on February 21, 2013, the Tenants paid \$1,300.00 as the security deposit.

The Landlord testified that on April 28, 2013, they received an e-mail from the Tenant R.S. indicating he was ending the tenancy effective May 1, 2013. The Landlord did not receive the keys back until May 10, 2013, and was not able to re-rent the unit until June 1, 2013. The Landlord stated that they advertised the unit immediately and entered into

the new tenancy agreement on approximately May 22, 2013 for only \$2,300.00 which is \$300.00 lower than the rent for this fixed term. They are seeking to recover lost rent for May 2013, of \$2,600.00 plus the \$300.00 difference for June, July and August 2013.

The Landlord indicated that these Tenants were also required to pay for cable and utilities and while they made a payment at the start of the tenancy they still owe \$450.00 towards utilities. The Landlord confirmed he did not provide evidence to support this claim for utilities or the new bed.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45(2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord thirty days written notice to end the tenancy effective on a date that is not earlier than the end date specified in the tenancy agreement.

In this case, I find the Tenants breached section 45(2) of the Act by ending this tenancy effective April 30, 2013, which is four months prior to the end of the fixed term. I accept the undisputed evidence that this breach caused the Landlord to lose rental income of \$2,600.00 for May 2013 and an additional loss of rent of \$300.00 per month for June, July and August. Accordingly, I award the Landlord monetary compensation for loss of rent in the amount of **\$3,500.00**.

The Landlord did not provide evidence to support his claim for \$450.00 in additional utilities or a cost of a replacement mattress. Therefore, I find there to be insufficient evidence to support the actual value of these losses, and the amounts claimed for utilities and a bed are dismissed, without leave to reapply.

The Landlord has only been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$75.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent	\$3,500.00
Filing Fee	<u>75.00</u>
SUBTOTAL	\$3,575.00
LESS: Security Deposit \$1,300.00 + Interest 0.00	<u>-1,300.00</u>
Offset amount due to the Landlord	<u>\$2,275.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,275.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: October 21, 2013

Residential Tenancy Branch

