



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

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

The Agent for the Landlord stated that on December 06, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the forwarding address provided by the Tenant, via registered mail. The Tenant acknowledged that these documents were mailed to each Tenant at the forwarding address provided; however the male Tenant did not attend the hearing.

The Landlord submitted documents to the Residential Tenancy Branch on March 19, 2014, copies of which were not served to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for liquidated damages; for compensation for damages; and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord and the Tenant agree that the Landlord and both Tenants signed a fixed term tenancy agreement, the fixed term of which ran from April 01, 2013 to March 31, 2014. The parties agree that the rent of \$950.00 was due by the first day of each month and that the Tenant paid a security deposit of \$475.00.

The Landlord and the Tenant agree that the Tenant gave the Landlord written notice to end the tenancy and that the rental unit was vacated on November 15, 2013. The parties agree that a forwarding address was provided to the Landlord, in writing, on November 15, 2013.

The Landlord is seeking compensation for lost revenue for December of 2013 and January of 2014. The Agent for the Landlord stated that the rental unit was advertised on a popular website on, or about, November 15, 2014 and a tenant was located for January 15, 2014.

The Landlord is seeking a \$950.00 incentive repayment. The Agent for the Landlord stated that the Tenant was not required to pay rent for the first month of the tenancy in exchange for entering into the fixed term tenancy agreement. The Tenant stated that she cannot recall whether there was an incentive agreement in place and that if there was one, she does not recall the details of the agreement.

The Landlord is seeking liquidated damages of \$350.00. The Agent for the Landlord stated that the tenancy agreement required the Tenant to pay \$350.00 in liquidated damages if the Tenant ended the tenancy before the end of the fixed term of the tenancy. The Tenant stated that she cannot recall the details of this term of the agreement.

The Landlord is seeking compensation, in the amount of \$90.00, for replacing keys that were not returned at the end of the tenancy. The Tenant agreed that the keys were not returned at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$35.00, for repairing damage to the walls in the unit. The Tenant stated that any damage to the walls was repaired at the end of the tenancy.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$950.00 by the first day of each month. I find that this was a fixed term agreement, the fixed term of which ran from April 01, 2013 to March 31, 2014.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on November 15, 2013, which was earlier than the end of the fixed term. I find that the Landlord made reasonable efforts to re-rent the unit, but was unable to do so until January 15, 2014. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

Specifically I find that the Tenant must pay \$950.00 to the Landlord for the loss of revenue that the Landlord experienced in December of 2013 and \$475.00 for the loss of revenue experienced between January 01, 2014 and January 14, 2014.

I find that the Landlord has submitted insufficient evidence to show that there was an incentive agreement that required the Tenant to repay the "incentive" if the tenancy was ended before the end of the fixed term of the tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as the tenancy agreement, which clearly outlines the rights and obligations of the incentive agreement. As the Landlord has failed to establish that there was a term in the tenancy agreement that required the Tenant to repay an "incentive" if the Tenant ended the tenancy prematurely, I dismiss the Landlord's claim to recover the "incentive".

I find that the Landlord has submitted insufficient evidence to show that there was a term in the tenancy agreement that required the Tenant to pay liquidated damages if the tenancy was ended before the end of the fixed term of the tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as the tenancy agreement, which clearly outlines the details of this term. As the Landlord has failed to establish that the details of the liquidated damages clause, I dismiss the Landlord's claim for liquidated damages.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the keys to the rental unit were not returned at the end of the tenancy. In addition to establishing that the Tenant failed to comply with the *Act*, the Landlord must also accurately establish the cost of remedying the breach. I find that the Landlord failed to establish the true cost of replacing the missing keys. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as an invoice, that corroborates the Landlord's claim that it cost \$90.00 to replace the keys. As there is no dispute that the keys were not returned, I award nominal damages in the amount of \$1.00, which simply serves to acknowledge that the Tenant did not return the keys.

I find that the Landlord submitted insufficient evidence to show that any damage to walls had not been repaired by the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's claim that the walls were damaged or that refutes the Tenant's testimony that any damage to the walls had been repaired by the end of the tenancy. I therefore dismiss the Landlord's claim for compensation for repairing the walls.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,476.00, which is comprised of \$1,425.00 in lost revenue, \$1.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$475.00 in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,001.00. 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: March 27, 2014

Residential Tenancy Branch

