



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL-S FFL

Introduction

This hearing was convened in response to an application by the landlord dated March 22, 2018 for a Monetary Order to recover unpaid rent / loss of revenue and to retain the security deposit as set off in partial satisfaction of their monetary claim, and recover the filing fee associated with this application.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution, notice of hearing and evidence of the landlord by *registered mail*, sent to the forwarding address provided by the tenant, in accordance with Section 89 of the *Residential Tenancy Act* (the Act), the tenant did not participate in the conference call hearing. An agent of the landlord attended the hearing. They testified that the registered mail was not returned to the landlord.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts as claimed for loss and the filing fee?

Background and Evidence

In the absence of the tenant the following is undisputed. The landlord and tenant entered into a written tenancy agreement on November 11, 2016 for the residential property of this matter (rental unit) as of December 01, 2016 for a payable monthly rent of \$4500.00 due in advance on the 1st of each month for a 2 year fixed term of time ending November 30, 2018. Upon entering into the agreement the landlord collected from the tenant a security deposit in the amount of \$2250.00 which the landlord retains in trust. The landlord provided a copy of the tenancy agreement inclusive of a 2 page addendum containing 13 items/terms of the agreement signed by the parties November 25, 2016. The landlord testified they subsequently encountered

difficulties in communicating with the tenant before the move in date of December 01, 2018 and lost confidence the tenant would take possession of the rental unit. Therefore the landlord placed double adds (2 staggered ads on the same day) on Craigslist December 01, 2018. The landlord provided evidence of the advertisements placed December 01 and then each renewed December 07, 2018.

On December 08, 2016 the tenant sent an e-mail to the landlord they would not be moving into the rental unit because of an alleged breach of the tenancy agreement. The landlord testified the tenant stated the landlord did not completely drain the indoor swimming pool of the rental unit, as per a term in the addendum of the agreement. The landlord did not provide a copy of the e-mail. However, the landlord provided they had sought to fulfill the tenant's request in respect to the indoor pool but received professional advice that draining the pool of all water could likely result in it cracking, therefore they notified the tenant of this information and left it to the tenant to fully drain the pool but that they would be responsible for returning the rental unit undamaged at the end of the tenancy.

The landlord provided evidence that in the latter part of January 2017 they entered into a new tenancy agreement for occupancy of the rental unit starting March 01, 2017 for the same payable monthly rent of \$4500.00. As a result the landlord seeks loss of revenue equivalent to the payable rent for December 2016 to February 2017 in the claimed sum of \$13,500.00.

The landlord provided evidence that on March 19, 2018 they received from the tenant their forwarding address in a statement requesting the return of the security deposit. The landlord made their application for dispute resolution within the same week.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the undisputed evidence of the landlord on a balance of probabilities I have reached a decision.

Section 16 of The Act states as follows: **(emphasis added)**

Start of rights and obligations under tenancy agreement

- 16.** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

I find that in this matter, a tenancy existed between the parties upon them entering into the tenancy agreement and the landlord collecting the security deposit. The parties' respective rights and obligations under the Act came into force on November 11, 2016.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that if the tenant determined not to continue the tenancy, the tenant was obligated to give the landlord valid Tenant's Notice to vacate under **Section 45** of the Act. I find the tenant's e-mail notification of December 08, 2016 ineffective pursuant to the requirements of Section 45 respecting a fixed term tenancy agreement, and specifically in addressing the tenant's apparent dissatisfaction and desire to end the tenancy for an alleged material breach of the contractual tenancy as afforded by **Section 45(3)** and pursuant to **Section 52** as to the form and content of the tenant's notice to end. However, it did clearly placed the landlord on notice the tenant was not moving into the rental unit.

In this matter the parties entered into a contract tenancy agreement for a fixed term. A tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the fixed term. And, the landlord's claim for loss of revenue is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do whatever is reasonable to minimize the damage or loss. I find that the landlord took reasonable steps early to minimize a loss in this situation when it seemed the tenant would not be taking possession of the rental unit.

I find that even if I were to accept the tenant's email of December 08, 2016 as valid Notice to End the tenancy pursuant to the Act, it remains that the tenant did not pay rent when due in the first month of the tenancy to which the landlord was entitled under the agreement.

In respect to the landlord's claim, **Section 7** of the Act provides as follows.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord provided evidence they made reasonable effort to minimize their losses by re-advertising the rental unit in early December 2016 given the seeming demise of the tenancy agreement. However I find the landlord has not provided sufficient evidence supporting

active efforts to re-rent the unit following the month of December 2016 so as to sufficiently meet the test established in **Section 7(2)**.

As a result, I accept the landlord's evidence they attempted but were unsuccessful in re-renting the unit within December 2016. Therefore, I grant the landlord unpaid rent/loss of revenue representing the period December 01 – 31, 2016 in the payable rent amount of **\$4500.00**. The landlord is further entitled to recover their filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent / loss of revenue to landlord	\$4500.00
Filing Fees for the cost of this application	100.00
<i>Less Security Deposit in trust</i>	<i>-2250.00</i>
Monetary Order to landlord	\$2350.00

Conclusion

The landlord's application in part is granted.

I Order that the landlord may retain the tenant's entire security deposit of \$2250.00 in partial satisfaction of their claim and award and I grant the landlord a Monetary Order under Section 67 of the Act for the balance of **\$2350.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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 17, 2018

Residential Tenancy Branch