



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

The landlord / applicant did not appear, however, the tenant / respondent and his translator attended. By way of his translator, the tenant / respondent gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The tenant and his family are residents of South Korea and still currently reside there. The tenant's agent, who is located in the Lower Mainland of British Columbia, represented the tenant in dealings with the landlord.

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy was from December 1, 2012 to November 30, 2013. Monthly rent of \$2,570.00 was due and payable in advance on the first day of each month. Rent was paid in full for December 2012, and a security deposit of \$1,285.00 was collected.

By way of e-mail dated December 31, 2012, the tenant's agent informed the landlord that the tenant would be unable to proceed with the tenancy as family applications for a Canadian Study Permit had been declined.

Subsequently, arising from rent which remained unpaid when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 16, 2013. The notice was served on the tenant in care of his agent by way of registered mail. A copy of the notice was submitted in evidence. Documentary evidence includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was “successfully delivered.”

It appears from the landlord’s documentary evidence that the landlord found new renters for the unit effective from February 1, 2013. There is no tenancy agreement in evidence before me between the landlord and the new renters.

In his submission, the landlord claims that the monthly rent agreed to with the new renters was \$2,400.00, which is \$170.00 less than the amount agreed to with the tenant who is the respondent in this dispute (\$2,570.00 - \$2,400.00). The landlord seeks a monetary order as compensation for unpaid rent / loss of income as follows:

\$2,570.00: *unpaid rent for January 2013*

\$1,700.00: *loss of rental income from February 1 to November 30, 2013 (10 x \$170.00)*

The tenant takes the position that as applications for Canadian Study Permits were declined, he and his family were unable to relocate to Canada, and the tenancy agreement was therefore frustrated. In the result, the tenant considers that he is not obligated to compensate the landlord for any rent beyond the end of December 2012. However, the tenant consented to the landlord’s retention of the full security deposit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

For the information of the parties, attention is drawn to section 44 of the Act which speaks to **How a tenancy ends**. In part, this section provides as follows:

44(1) A tenancy ends only if one or more of the following applies:

(e) the tenancy agreement is frustrated;

Further, Residential Tenancy Policy Guideline # 34 addresses “Frustration,” in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, and in view of landlord's failure to attend the hearing scheduled in response to his application, I find that the tenancy was frustrated, that no additional payment of rent is due, and that the landlord's application must therefore be dismissed.

Finally, pursuant to the tenant's permission by way of his affirmed testimony, I hereby order that the landlord retain the tenant's full security deposit.

Conclusion

The landlord's application is hereby dismissed.

The landlord is ordered to retain the tenant's full security deposit.

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 09, 2013

Residential Tenancy Branch

