



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNDC, FF

Introduction:

This hearing was held in response to an Application for Dispute Resolution filed by the landlord seeking a monetary order for compensation or loss and recovery of the filing fee for the costs of this application.

Both parties attended and gave evidence under oath.

Background and Evidence

The landlord submitted into evidence a tenancy agreement signed by the parties for a fixed term commencing May 1, 2008 and ending October 31, 2008. The rent was fixed at \$1,250.00 per month. The evidence is that the tenant paid a security deposit of \$1,250.00 and a pet damage deposit of \$600.00 for a total of \$1,850.00 at the start of the tenancy.

The landlord says the tenants moved out at the end of July, 2008 contrary to the terms of the tenancy. The landlord says she advertised the availability of the rental unit on Craig's List but was unable to secure new tenants until September 2008.

The landlord said that although her application for dispute resolution says she is seeking a monetary order in the amount of \$1,250.00 she is actually seeking to retain the security deposit in the sum of \$1,250.00 which she has not yet returned to the tenants. The landlord said she did not return the deposit because the tenant's July rent cheque was returned due to non-sufficient funds and this made her concerned. Then, when she realized she was not going to be able to re-rent the suite for August she decided to make application to retain it in lieu of August 2008 rent.

The tenant says they were forced to move out after discovering that there was a great deal of illegal drug activity in the neighbourhood. The tenant says there were many break-ins at the rental unit and drug users would come into the building to do drugs. The tenant says there were fires in the rental unit. The tenant also says the plumbing didn't work properly. The tenant says she told the landlord in June 2008 that she would be leaving at the end of July and she had the landlord's verbal agreement to end the tenancy early. The tenant says she told the landlord to retain the security deposit as payment of rent for July 2008. Believing that the landlord was keeping the security deposit for the July rent the tenant put a stop payment on the post-dated July rent cheque she supplied when the tenancy began. The tenant says it was for this reason the July rent cheque was returned, not due to insufficient funds.

The tenant says that, in addition, at the end of the tenancy she told the landlord to keep \$300.00 of the \$600.00 pet deposit in order to clean the carpets. Therefore the only sum returned by the landlord after the tenant's vacated the rental unit was the remaining \$300.00 of the pet deposit with interest.

The tenant says that even though they had agreed to end the tenancy at the end of July the landlord did not bring any prospective tenants through the rental unit after they agreed to end the tenancy. Further the tenant says the landlord went away on vacation from the end of June to July and was not available to re-rent the unit.

While no condition inspection reports were filed in evidence, both parties agreed that the reports were prepared.

Analysis

The Act says that a tenancy agreement contains standard terms and may not be amended to change or remove those standard terms, further, that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Therefore while the tenant says she had verbal agreement from the landlord to end this fixed term tenancy early, a verbal agreement is not sufficient under the Act.

When a landlord claims loss of income under the Act the landlord must show how he/she mitigated the losses which they now claim. The evidence is that when the landlord found out the tenants wished to leave, she posted a rental listing on Craig's list. Further, the evidence of the tenant is that the landlord was not available at the end of June early July to bring tenants through and that no prospective tenants did come through the rental unit.

Findings

The tenant did not make application to end the tenancy due to a breach of the tenancy agreement for loss of quiet enjoyment. However, even though the tenant says she had the landlord's verbal agreement to end the tenancy, the Act is clear that the only way to amend a term in a tenancy agreement is to do so in writing. I therefore find that the tenant is responsible for some of the landlord's loss.

In determining that loss, the evidence is that the landlord placed an advertisement on Craig's list and was away on vacation unable to show prospective tenants through the property. Further, there is no evidence that she appointed an agent to attempt to re-rent the property for her while she was away. Now she looks to recover all of her August rental loss from the tenant and I find this to be inappropriate given the landlord's mitigation. I will therefore award the landlord only one-half of August rent; that is \$625.00.

I will allow the landlord to deduct \$625.00 from the security deposit she currently holds and instruct the landlord to return the sum of \$633.61 to the tenant forthwith. This sum is calculated at \$1,250.00 plus \$8.61 interest for the period April 30, 2008 to October 14, 2008 less \$625.00 awarded herein.

The tenants are given a formal monetary order in the sum of \$633.61 that may be enforced in the Provincial Court of British Columbia if necessary.

Dated October 14, 2008.

