



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

On December 01, 2009 the Landlord submitted a document to the Residential Tenancy Branch that indicates it is also seeking compensation for loss of revenue from the month of September, "investigation costs" of \$525.00, \$249.50 in advertising costs that are in addition to the \$860.45 in advertising costs that were claimed in the original Application for Dispute Resolution, and \$22.83 in utility fees that are in addition to the \$353.08 in utility fees that were claimed in the original Application for Dispute Resolution. At the hearing the Landlord declared that it was seeking compensation for the additional losses that were outlined in the document that was submitted on December 01, 2009.

The Landlord was advised that Landlord could not increase the amount of the monetary claim without amending the Application for Dispute Resolution; that the document submitted on December 01, 2009 did not properly amend the Application for Dispute Resolution; and that this hearing would be limited to claims for compensation that were outlined on the original Application for Dispute Resolution.

The witness for the Landlord could not be contacted by telephone, in spite of three attempts made by the Telus operator. On each attempt the operator was redirected to the voice mail for the witness.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue and expenses incurred as a result of a premature end to a fixed term tenancy agreement and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a fixed term tenancy agreement that was scheduled to end on September 30, 2009; that the Tenants were required to pay monthly rent of \$1,850.00 plus utilities for the duration of the fixed term tenancy; that the tenancy ended on February 01, 2009; and that this tenancy was the subject of a dispute resolution hearing on May 21, 2009, at which time the Landlord was awarded compensation for loss of revenue for the months of February, March, and April of 2009.

The Landlord #1 stated that she has made extensive efforts to find new tenants since this tenancy ended. She stated that she has been working with an agent, who is a realtor, who has been searching for tenants on behalf of the Landlord; that the rental unit has been repeatedly and consistently advertised on the internet on three different web sites; that the rental unit has been advertised on a local television network designed to advertise vacant rental units; and that the rental unit has been advertised extensively in local newspapers as well as the Vancouver Sun and the Edmonton Journal.

The Landlord submitted copies of the following receipts from the Okanagan Valley Newspaper Group:

- A receipt for an advertisement that ran from May 01, 2009 until May 07, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00
- A receipt for an advertisement that ran from May 21, 2009 until May 27, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00
- A receipt for an advertisement that ran from May 28, 2009 until June 03, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00
- A receipt for an advertisement that ran from June 04, 2009 until June 10, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00
- A receipt for an advertisement that ran from June 16, 2009 until June 22, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00
- A receipt for an advertisement that ran from June 30, 2009 until July 06, 2009, in which the rental unit was advertised at a weekly rate of \$2,200.00

- A receipt for an advertisement that ran from June 30, 2009 until July 06, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from July 07, 2009 until July 13, 2009, in which the rental unit was advertised at a weekly rate of \$2,200.00
- A receipt for an advertisement that ran from July 07, 2009 until July 13, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from July 16, 2009 until July 22, 2009, in which the rental unit was advertised at a weekly rate of \$2,200.00
- A receipt for an advertisement that ran from July 16, 2009 until July 22, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from July 25, 2009 until July 31, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from August 1, 2009 until August 08 , 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from August 9, 2009 until August 15 , 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from August 16, 2009 until August 22 , 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- A receipt for an advertisement that ran from August 25, 2009 until August 31 , 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00, with a proviso that the unit was not available for rent at that rate until September 1st
- Receipts for advertisements for periods in September of 2009, which is not the subject of a claim in this Application for Dispute Resolution

The Landlord submitted a copy of receipt from the Black Press for an advertisement that ran from June 23, 2009 until June 29, 2009, in which the rental unit was advertised at a monthly rate of \$1,850.00.

The Landlord submitted a copy of receipt from the Edmonton Journal for an advertisement that ran from June 12, 2009 until June 19, 2009, in which the rental unit was advertised at a weekly rate of \$2,200.00.

The Landlord submitted a copy of receipt from the Calgary Sun for an advertisement that ran from June 12, 2009 until June 18, 2009, in which the rental unit was advertised at a weekly rate of \$2,200.00.

The Landlord #1 stated that in spite of her on-going attempts to find new tenants for the rental unit, nobody expressed an interest in renting this unit on a monthly basis. She stated that the rental unit was rented for the first three weeks of August, for which the Landlord received \$3,000.00, which was the only revenue received by the Landlord for the months of May, June, July, and August. The Landlord is seeking compensation for the revenue that was lost during these four months.

The Tenant contends that the Landlord did not make a sufficient effort to mitigate their losses during the months of May, June, July, and August. The Tenant argued that during the months of July and August the Landlord did not advertise the rental unit on a monthly basis, but simply advertised it on a weekly basis at a rate of \$2,200.00 per week. The Tenant further argued that the Landlord should have reduced the monthly rent, which would have made it more appealing to a prospective renter, and that the Tenants could have compensated them for the difference between the rent they were obligated to pay and the rent that was being paid by the new tenant.

The Landlord contends that the property was offered for rent at a realistic market value and that they did not wish to lower the rent as they did not want to attract renters who might not be suitable for this property. The Landlord contends that they were flexible with the terms of the tenancy and the amount of rent, even though they did not reduce the rent in their advertisements. The Landlord contends that their flexibility was demonstrated by the fact that they advertised the unit for rent as either furnished or unfurnished.

The Landlord is seeking compensation, in the amount of \$860.45, for the cost of advertising the rental unit. The Tenant argued that they should not be responsible for these advertising costs as they Landlord would not have incurred these expenses if they had mitigated their losses by reducing the rent.

The Landlord is seeking compensation, in the amount of \$353.08, for the cost of utilities. The Landlord submitted a copy of a bill from Terasen Gas, in the amount of \$278.08, \$144.02 of which appears to relate to a period prior to April 01, 2009 and the remainder of which appears to relate to a period between April 01, 2009 and July 12, 2009. The Landlord submitted a copy of a hydro bill, in the amount of \$97.83, which has a billing date of August 10, 2009.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,850.00 on the first day of each month; that the fixed term tenancy was to end on September 30, 2009; and that the Tenants prematurely end the tenancy on February 01, 2009.

I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. The evidence shows that the Tenants have already been ordered to compensate the Landlord for loss of revenue that the Landlord experienced during the months of February, March, and April of 2009.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize their damage or loss.

I find that it would be reasonable to conclude that rent of \$1,850.00 is not consistent with the current rental market after unsuccessfully advertising the rental unit for a period of three months. I find that it would have been reasonable, in these circumstances, for the Landlord to reduce the monthly rent by some amount in hopes that it would attract a viable tenant. I find that it is reasonable to conclude that the Landlord would have been able to find a new tenant if the rent was reduced and that the Landlord would not, therefore, have experienced such a significant loss of revenue during the months of May, June, July, and August.

The evidence shows that after June 22, 2009 the rental unit was not advertised for rent, on a monthly basis, for the months of July and August. I find it reasonable to conclude that this significantly interfered with the Landlord's ability to locate a new tenant for the rental unit. In reaching this conclusion I was strongly influenced by the fact that this rental unit is a lakefront property that would be most desirable to a prospective tenant during July and August and that the decision to not rent it during that period likely had a significant impact on the Landlord's inability to find new tenants.

Although I accept that the Landlord was able to generate some revenue during the summer months, I find that when considered in its totality, that the Landlord did not properly mitigate its losses. On this basis, I hereby dismiss the Landlord's application for loss of revenue for the months of May, June, July, and August.

I also dismiss the Landlord's application for compensation for costs that are related to advertising the rental unit for the months of May, June, July, and August. I find that it is reasonable to assume that the Landlord would not have incurred these costs if the Landlord had attempted to mitigate their loss in a timely manner.

I also dismiss the Landlord's application for compensation for hydro costs. I find that it is reasonable to assume that the Landlord would not have incurred these costs if the Landlord had attempted to mitigate their loss in a timely manner.

I also dismiss the Landlord's application for compensation for gas costs that are related to the period after April 01, 2009. I find that it is reasonable to assume that the Landlord

would not have incurred these costs if the Landlord had attempted to mitigate their loss in a timely manner. I find that the Landlord is entitled to gas costs that were incurred prior to April 01, 2009, in the amount of \$144.02, as I cannot conclude that the Landlord failed to mitigate its losses prior to May of 2009. I am unable to award the Landlord compensation for gas costs between April 01, 2009 and May 01, 2009, as I have insufficient evidence to establish what those costs were.

I find that the Landlord's application has been largely without merit and I therefore dismiss the Landlord's application to recover the cost of filing this Application for Dispute Resolution. In reaching this conclusion I find it reasonable to conclude that the monetary claim that has been established by the Landlord could have been resolved, with due diligence, at the dispute resolution hearing on May 21, 2009.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$144.02, in compensation for gas expenses incurred prior to April 01, 2009, and I grant the Landlord a monetary Order in that amount. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: December 09, 2009.

Dispute Resolution Officer