



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?

Background and Evidence

This tenancy started in August 2007 and ended on March 27, 2010. The Parties entered a fixed term tenancy agreement on December 29, 2009 for the period February 1, 2010 to March 31, 2011 at the rental rate of \$2,000.00 per month. A term of the Addendum to the tenancy agreement stated,

“the Tenant will give no less than two full months written notice prior to moving out. The Tenant agrees to either (i) payout the remaining rent charges on the lease or (ii) he can sublet the suite for the remainder of the term. If the Tenant elects to sublet, he is responsible for finding a person that the landlord approves of in advance.”

The Tenant claimed that when he entered into the tenancy agreement he told the Landlord that he would be looking for cheaper accommodations and might have to move out early. The Tenant said the Landlord told him that he could move out but that he would lose his security deposit. On March 9, 2010, the Tenant sent the Landlord an e-mail advising the Landlord that he would be moving out on March 27, 2010 and indicated that he would be attempting to find a new tenant to take over the tenancy agreement. The Tenant said he advertised the rental unit for rent and had a number of interested responses. In particular, the Tenant claimed that he had 3 qualified applicants who he referred to the Landlord for her approval but she refused to consider them. The Tenant said it was the Landlord's position that under the terms of the tenancy agreement, he was not entitled to move out for 2 months after he gave written notice and as a result, she would not consider having a new tenant until that time.

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The Landlord admitted that she did not believe the Tenant had given her “proper notice” and that as a result, she was not under an obligation to consider a new tenant until May 1, 2010 at the earliest. The Landlord admitted that she received copies of rental applications from the Tenant by e-mail but said she was out of the country on vacation at the time and wanted to wait until she returned on March 26 or 28, 2010 so that she could meet with the prospective tenants. Consequently, the Landlord said she could not re-rent the rental unit for April 1, 2010 and only received 2 applications during that month which were not acceptable to her. The Landlord said she advised the rental unit for rent on Craig’s List in April and May 2010 and was able to re-rent it for \$2,050.00 per month commencing June 1, 2010. The Landlord also claimed that she had to make repairs to the rental unit but admitted that they were due to damage caused by a previous tenant or the result of reasonable wear and tear.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

Section 34(2) of the Act says that if a fixed term tenancy is for 6 months or more, a landlord must not unreasonably withhold her consent to a tenant assigning or subletting a tenancy agreement.

RTB Policy Guideline #8 (Unconscionable and Material Terms) states at p. 1 that “a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.” I find that the term of the Parties’ tenancy agreement that requires the Tenant to give 2 full months notice before the tenant can move out is oppressive and contrary to the Act. In particular, the Landlord claimed that this provision meant that a new tenant could not take over the tenancy agreement for 2 months. However, I find that this is oppressive to a Tenant who may be able to sublet a rental unit earlier and contrary to the provisions of the Act which prohibit the Landlord from unreasonably withholding their consent to assign or sublet a tenancy agreement. Consequently, I find that *this portion* of the clause of the Parties’ tenancy agreement is unenforceable.

I also find that there is little evidence to support the Tenant’s argument that he believed he could end the tenancy early and be liable for only his security deposit. The Tenant admitted that he knew he was signing a fixed term tenancy and there is nothing in that

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written agreement that relieves him from compensating the Landlord for a loss of rental income in the event he ended the tenancy agreement early without assigning or subletting it. Consequently, I find that the Tenant is liable for a loss of rental income subject to the Landlord's obligation to mitigate her damages (or minimize her loss of rental income).

I find that the Landlord did not take reasonable steps to mitigate her damages once she was advised by the Tenant that he was ending the tenancy. In a letter to the Tenant dated March 9, 2010, for example, the Landlord wrote,

"if you e-mail me today with your 2 month notice, this means that you cannot rent the apartment before May 1st... So as you approach people about potentially living [in the rental unit] make sure you explain that they cannot assume your lease until May 1st at the earliest..."

And in a further e-mail dated March 12, 2010, the Landlord wrote,

"..as of now you will not be able to sublet our suite until June 1st and hopefully maybe if all works out for you by May 1st. So please do not advertise any further until our return and get us your written notice letter. It is obvious there is interest in the suite, but we still have not had notice in writing."

I find it likely, as the Tenant claimed that the Landlord was not willing to consider the candidates he referred to her because it was her position that he had not given her proper written notice. In doing so, I find that the Landlord unreasonably withheld her consent to the Tenant's proposed applicants and may have been able to reduce her damages had she not done so. However, I also find that at some point in April 2010, the Landlord took steps to re-rent the rental unit. Consequently, I find that the Landlord is entitled to recover a loss of rental income for one month in the amount of \$2,000.00.

As the Landlord has been partially successful in this matter, I find that she is entitled to recover from the Tenant one-half of her filing fee for this proceeding in the amount of \$50.00.

Conclusion

A monetary order in the amount of **\$2,050.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.



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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: August 17, 2010.

Dispute Resolution Officer