



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlord withdrew its claim to recover carpet cleaning expenses.

Issues(s) to be Decided

1. Is the Landlord entitled to recover a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on August 2007 and ended on March 31, 2010 when the Tenants moved out. Rent was \$1,985.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$975.00 at the beginning of the tenancy.

The Landlord's agent said that it was the Landlord's usual practice to allow tenancies of no less than 6 months. The Landlord's agent said she knew the Tenants were planning on purchasing a residence and therefore agreed to a couple of 3 month leases and then on December 2, 2009 entered into a 2 month lease with the Tenants commencing March 1, 2010 and ending on April 30, 2010. The Landlord said the Tenants moved out on March 31, 2010 and the rental unit could not be re-rented until May 21, 2010 and therefore the Landlord lost rental income for the month of April 2010. The Landlord's agent said the rental unit was advertised on the Landlord's website commencing in February 2010 for availability May 1st, 2010. The Landlord's agent said she had no record as to whether the Landlord's rental listing was amended to show the rental unit was available for April 2010 once the Tenants moved out. The Landlord admitted that the Tenants gave their forwarding address in writing on March 31, 2010 when they signed the move out condition inspection report.

The Tenants claim that they thought they were entering into a 3 month fixed term tenancy on December 2, 2009 that was to commence January 1, 2010 and expire on March 31, 2010. Consequently, the Tenants said they gave the Landlord written notice on February 28, 2010 that they would be moving out on March 31, 2010. The Tenants

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admitted that they signed the tenancy agreement and initialled the page that sets out the term of the tenancy. The Tenants also argued that they made a written request to the Landlord to move in a specially trained disability dog (as their son has Epilepsy) but the Landlord's agents would not give their consent. Consequently, the Tenants said they had to move out at the end of March 2010.

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.

I find that the Tenants entered into a fixed term tenancy agreement that was to expire on April 30, 2010 but they ended it instead on March 31, 2010 without the consent of the Landlord. The Landlord's agent said that her records showed that the rental unit had been listed on the Landlord's website as early as February 2010 for availability May 1, 2010 (when the tenancy agreement was supposed to expire). However, the Landlord's agent could not determine if the Landlord's listing had been amended to show that the rental unit would be available commencing April 1, 2010 once the Landlord received the Tenants' written notice. The Landlord's agent had no evidence to show that any steps had been taken to try to re-rent the rental unit for April 1, 2010 on its website or that it advertised in any other publication. In the circumstances, I find that there is insufficient evidence to conclude that the Landlord took reasonable steps to minimize its loss of rental income for April and as a result, that part of its claim is dismissed without leave to reapply.

The Landlord's agent also argued that the Landlord was entitled to one month's rent pursuant to a term of the Parties' tenancy agreement (clause 3.0) that stated as follows:

"that in the event of an early termination, the Lessee acknowledges and agrees that pursuant to this Lease, Lessee is responsible for the monthly rental fee until such time as the property has been re-rented by the Lessor to a qualified and suitable tenant and a written lease agreement with such party has been entered into;"

I find that this term confers on the Landlord, the same rights set out under s. 45(2) of the Act. However, the clause does not absolve the Landlord from its obligation to mitigate



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its damages as required under s. 7(2) the Act. In particular, section 5 of the Act states that any attempt to avoid or contract out of the Act or regulations is of no effect.

As the Landlord has been unsuccessful on its claim, I find that it is not entitled to recover the \$50.00 filing fee from the Tenants and that part of its application is also dismissed without leave to reapply. As the Tenants provided their forwarding address in writing to the Landlord on March 31, 2010, I order the Landlord pursuant to s. 38 of the Act to return the Tenants' security deposit to them with accrued interest of \$20.07.

Conclusion

The Landlord's application is dismissed without leave to reapply. A monetary order in the amount of **\$995.07** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 28, 2010.

Dispute Resolution Officer