



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

One of the landlords attended the hearing, and the tenant also attended. The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence before me has been reviewed and considered.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The undisputed testimony of the parties is that a tenancy agreement had been entered into on April 19, 2010 on a month-to-month basis. The agreement provided that the tenancy would begin on May 1, 2010, rent in the amount of \$1,000.00 was payable in advance on the 1st day of each month, and the landlord collected a security deposit from

the tenant in the amount of \$500.00. Further undisputed evidence of the parties is that the tenant did not move into the rental unit. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord testified that the landlords had been advised by the tenant on April 27, 2010 that the tenant had lost her job and would not be relocating from Powell River to the rental unit in Nanaimo. An advertisement was posted on "Used Nanaimo" the same day advertising the unit for rent available on May 1, 2010. The unit was re-rented for June 1, 2010, however the new tenant did move into the unit a week early, and the landlord did not collect rent for the additional days in May. She further testified that the landlords did lose a month of rent and her husband was not working, and losing that month of rent put them in a financial crisis.

The landlords are claiming \$1,000.00 for loss of rent, \$50.00 for the cost of filing this application, less the security deposit of \$500.00, leaving a balance claimed in the amount of \$550.00.

The tenant testified that she and her family have a home in Powell River. At the end of March, 2010 she started a new job in Nanaimo and had stayed with friends, going home on weekends.

The tenant viewed the rental unit, signed the tenancy agreement, and paid the security deposit. On the morning of April 27, 2010, the tenant found out that her employment had ended immediately. She did not anticipate losing that job or having no income. She further testified that she did not hear back from the landlords after notifying them that she could not take the rental unit and concluded that the landlords had accepted her verbal notice to cancel the tenancy. She provided her mailing address to the landlords by way of email but received no response. The tenant further testified that she did not receive a copy of the tenancy agreement from the landlords until she was served with the evidence package for this hearing.

The tenant claims that the tenancy was frustrated by circumstances beyond her control.

Analysis

The *Residential Tenancy Act* states as follows:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the tenancy agreement was entered into by the parties on April 19, 2010. The landlords took action immediately upon being informed that the tenant was not able to move into the unit by advertising the unit for rent for May 1, 2010 and have therefore satisfied the requirements of Section 7 of the *Act*, which is to do whatever is reasonable to minimize the damage or loss.

I further find that the tenant's assertion that the tenancy was frustrated does not satisfy the requirements for making such a finding. I refer to the Residential Tenancy Policy Guidelines:

"The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms."

I find that the unforeseeable change in circumstances of the tenant does not mean that the contract was frustrated; the parties were able to fulfill the contract, albeit at a cost that the tenant may not have been able to afford, or may not have wanted to due to her decision to not move to Nanaimo.

Conclusion

For the reasons set out above, I find that the landlord has established a claim for \$1,000.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the

balance due of \$550.00. This order may be filed in the 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: September 20, 2010.

Dispute Resolution Officer