



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed an application seeking the return of his security deposit. The landlord filed an application seeking compensation for loss of rent due to the tenant's breach of the fixed term tenancy.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the landlord breach the tenancy agreement, *Act* and regulations entitling the tenant to the return of double his security deposit plus interest?

Did the tenant breach the fixed term tenancy agreement entitling the landlord to compensation due to lost rent?

Background and Evidence

This tenancy began on September 1, 2009 for a fixed term ending on August 31, 2010. The tenant gave notice and ended the tenancy on June 30, 2010. The monthly rent was \$1,050.00 and the tenant paid a security deposit of \$525.00 on September 1, 2009. The tenant provided the landlord his forwarding address in writing on June 30, 2010.

The tenant states that the landlord accepted the early end to the tenancy and did not express any intent to pursue the tenant for loss of rent. The tenant submits that the landlord accepted the notice, as demonstrated in the e-mail correspondence, and then proceeded to place the rental unit on the market for rent. The tenant submits that the landlord never intended or even attempted to re-rent the unit after he gave notice to end the tenancy.

The landlord acknowledged that she was not intending to rent the unit but argued that the tenant remained responsible for the term of the contract. When the landlord received the notice they listed the property which was her intent. The landlord also argued that she could not mitigate her loss through short term rentals due to bylaw restrictions. The landlord did not sell the unit until September 2010.

The landlord seeks two months outstanding rent due to the tenant's breach. The tenant seeks the return of double his security deposit due to the landlord's breach.

Analysis

I accept from the undisputed evidence of the parties that the tenancy ended on June 30, 2010 after the tenant gave notice by e-mail on May 28, 2010. I accept that the tenant was willing to assist the landlord by advertizing and showing the rental unit if the landlord intended to find another tenant.

I accept that the landlord did not respond until June 26, 2010. I accept that the landlord was not anticipating that the tenant would be vacating; however, I do accept that the landlord accepted that the tenancy was ending. I find that the tenant did breach the fixed term tenancy.

I find that the landlord made no expression of intent to hold the tenant responsible for any possible loss of rent. I find that the landlord made no attempt to mitigate her loss because the landlord did not want to rent the unit again. It was not until an e-mail of July 8, 2010 that the landlord indicated that there would be any outstanding rent and that she would apply the tenant's security deposit against that outstanding rent.

Policy guideline #3 is clear that the landlord must give notice of the intent to sue for lost rent when they accept the end of the tenancy. I am not satisfied that the landlord did so. The landlord decided contrary to section 38 of the *Act* to retain the security deposit in partial satisfaction of the loss.

In addition to failing to inform the tenant that she would be pursuing the potential loss of rent, the landlord also failed to take any measures to mitigate or minimize the loss as required by section 7 of the *Act*. I accept that the tenant was willing to advertize and show the rental unit on the landlord's behalf. I find that the landlord did not take any steps because she did not consider it as a loss until after the tenancy had ended.

I find that the landlord has precluded herself from suing for lost rent at this point due to her failure to notify the tenant of their intent seek the loss of rent and her failure to mitigate the loss. Therefore, even though the tenant breached the tenancy agreement, I find that the landlord failed to mitigate her loss. If the landlord had notified the tenant of the intent to claim the two month's loss rent, the tenant could have made different choices such as continuing with the lease or assigning or subletting the lease. I do not accept the landlord's argument that they were precluded from mitigating their loss due to municipal bylaws.

Therefore, I deny the landlord's application seeking compensation for the loss of two month's rent.

I grant the tenant's application for the return of double his security deposit.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence before me that the landlord was provided with the tenant's forwarding address in writing and that the landlord failed to return the tenant's security deposit or file an application for Dispute Resolution to retain the tenant's security deposit within 15 days.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application from the landlord. I find that the tenant has established a total monetary claim for the sum of **\$1,100.00**. This sum is comprised of double the security of \$525.00 plus the \$50.00 filing fee.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$1,100.00**. This Order must be served upon the landlord. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 21, 2010.

Dispute Resolution Officer