

DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing 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, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlords submitted evidence to the Residential Tenancy Branch, a copy of which was served to the Respondents. The Respondents acknowledged receipt of the evidence.

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Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to financial compensation for unpaid rent and damages to the rental unit; whether the Landlords are entitled to retain all or part of the security deposit paid by the Respondents; and whether the Landlords are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlords submitted a written tenancy agreement that names both Respondents and is signed by the male Respondent and both Landlords. The tenancy agreement indicates that the tenancy began on September 01, 2008 and that it was for a fixed term that would end on August 31, 2011. The tenancy agreement indicated that monthly rent of \$1,400.00 was due on the first day of each month.

The female Respondent stated that she viewed the rental unit after the male Respondent had signed the tenancy agreement and that she had a discussion with the male Landlord which caused her to believe that he wished to change the fixed term of the tenancy agreement, so she did not sign the agreement. The male Landlord denied telling the female Respondent that he wished to change the fixed term of the tenancy agreement.

The female Respondent stated that she understood that she was renting the rental unit for \$1,400.00 per month and that rent was due on the first day of each month.

The Landlords and the Respondents agree that the Respondents paid a security deposit of \$700.00 on August 10, 2008 and a pet damage deposit of \$200.00 on September 01, 2008.

The Landlords and the Respondents agree that the tenancy ended on June 21, 2010 and that the Respondents did not give written notice of their intent to end the tenancy until May 30, 2010.

The Landlords and the Respondents agree that the Respondents only paid \$500.00 in rent for June of 2010. The Landlords are seeking compensation for the remaining \$900.00 in rent that was due on June 01, 2010.

The female Landlord stated that on May 30, 2010 the Landlords started advertising the rental unit on two popular websites. She stated that a prospective tenant viewed the rental unit on May 30, 2010 and told her that she believed the home needed extensive repairs. She stated that the Landlords subsequently determined they would be unable to rent the unit until it was repaired so they stopped advertising it sometime during the second week in June of 2010. She stated that the rental unit had been repaired by August 06, 2010 and that the Landlords moved back into the rental unit on August 07, 2010. The Landlords are seeking compensation for lost revenue from July of 2010, in the amount of \$1,400.00, and lost revenue from August, in the amount of \$326.69.

The Landlords submitted evidence to show that the Landlords filed a claim with their insurance company for "tenant vandalism" on June 20, 2010 and that the claim was closed on September 08, 2010 with a total payout of \$19,460.03 to a restoration company. The Landlords are seeking to recover the insurance deductible of \$5,000.00. The Respondents dispute the Landlords claim for damages.

The Landlords' Application for Dispute Resolution did not specify the damages to the rental unit for which the Landlord is claiming compensation nor did the Landlord outline the cost of repairing the damages to the rental unit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the male Respondent entered into a fixed term tenancy agreement with the Landlord that began on September 01, 2008 and that was scheduled to end on August 31, 2011; that the agreement required the male Respondent to pay monthly rent of \$1,400.00 on the first day of each month; that the Respondents paid a security deposit of \$700.00 and a pet damage deposit of \$200.00 on September 01, 2008; and that the tenancy ended on July 01, 2010.

As the female Respondent did not sign the fixed term tenancy agreement and does not acknowledge that she agreed with the fixed term of the tenancy agreement, I find that she did not enter into a fixed term tenancy agreement for this rental unit. I find that she did enter into a verbal tenancy agreement with the Landlord in which she agreed that she and the male Respondent would pay monthly rent of \$1,400.00 on the first day of each month.

On the basis of the undisputed evidence presented at the hearing, I find that the Respondents only paid \$900.00 in rent for June of 2010. Section 26 of the *Act* requires tenants to pay rent when it is due. As the male Respondent was required to pay rent of \$1,400.00 on June 01, 2010 pursuant to the written tenancy agreement, the female Respondent was required to pay rent of \$1,400.00 on June 01, 2010 pursuant to her verbal tenancy agreement, and they only paid \$500.00 of the rent for June, I find that they still owe the Landlord \$900.00 in rent from June of 2010.

Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Respondents' security deposit and pet damage deposit of \$900.00 in full satisfaction of the outstanding rent from June of 2010.

I find that the male Respondent did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the male Respondent must compensate the Landlord for losses the Landlord experienced as a result of his non-compliance with the *Act*, pursuant to section 67 of the *Act*.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord suffered a loss of revenue for the entire month of July of 2010 and for six days in August of 2010.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act* must do whatever is necessary to minimize the damage or loss. In these circumstances, I find that the Landlords were obligated to advertise the rental unit continually until such time as they found a new tenant or they elected to occupy the rental unit themselves.

In these circumstances, the Landlords took reasonable steps to advertise the rental unit as soon as they received written notice of the Respondents' intent to vacate the rental unit and they were unable to rent the rental unit for July 01, 2010. I therefore find that

the Landlords took reasonable steps to rent the unit for July of 2010 and that the male Respondent is obligated to compensate them for the loss of revenue they experienced for July of 2010.

I find that the Landlords stopped advertising the rental unit in mid-July, which significantly reduced their ability to find new tenants for August 01, 2010. Regardless of whether the rental unit required repairs for damages caused by the Respondents, I find that the Landlord had an obligation to continue to seek a potential tenant for August 01, 2010 and to attempt to hasten the repairs if a tenant could be found. I find that the Landlords did not diligently attempt to mitigate their losses when they stopped advertising the rental unit in the middle of July. I therefore dismiss the Landlords' claim for compensation for loss of revenue for any portion of August of 2010.

I find that the female Respondent was not required to comply with the fixed term of the written tenancy agreement, as she did not sign the agreement. I therefore find that she is not obligated to compensate the Landlords for the loss of revenue they experienced and I will not be naming her on the monetary Order granted to the Landlords.

At the hearing the Landlord was advised that the application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Act*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the fact that the Application for Dispute Resolution did not list the damages to the rental unit and it did not disclose the amount of compensation being sought for each item. I find that proceeding with the Landlords' claim for damages at this hearing would be prejudicial to the Respondents, as the absence of particulars makes it difficult, if not impossible, for the Respondents to adequately prepare a response to the claims.

It is not sufficient to simply establish that an insurance company has awarded compensation for damages that the insurance company has attributed to "tenant vandalism". I find this to be particularly true when I have no information before me as to why or how the insurance company concluded that the Respondents damaged the rental unit. To be awarded compensation in these circumstances, the Landlord must submit sufficient evidence at a dispute resolution hearing to cause a Dispute Resolution Officer to conclude that a damage or loss occurred; that the damage or loss was the result of the Respondents breaching the tenancy agreement or the *Act*; the amount of the loss or damage; and that the Landlord took reasonable steps to mitigate the loss.

I find that the Landlords' application has merit and I find that the Landlords are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlords have established a monetary claim, in the amount of \$1,500.00, which is comprised of \$1,400 in loss of revenue for July of 2010 and \$100.00 in

compensation for the filing fee paid by the Landlords for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the interest accumulated on the Respondents' security deposit, in the amount of \$4.50, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance of \$1,495.50. In the event that the male Respondent does not comply with this Order, it may be served on the male Respondent, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for damages to the rental unit.

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: March 04, 2011.

Residential Tenancy Branch