

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the tenant sent the landlord an email on August 29, 2010 advising the landlord that the tenants would be ending their tenancy by September 30, 2010. The tenant confirmed that he received the landlord's dispute resolution hearing package sent by the landlord on February 15, 2011 by registered mail. I am satisfied that the landlord's property manager (the landlord) sent the hearing package and the parties exchanged their evidence packages to one another in advance of this hearing. Both parties were prepared to proceed with this hearing after considering one another's evidence packages.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commencing on April 1, 2010 was set to end on March 31, 2011. Monthly rent was \$750.00, payable in advance on the first of each month. The landlord retains no portion of the tenant's \$375.00 security deposit.

On August 29, 2010, the tenant sent the landlord an email advising the landlord that he would be ending his tenancy on September 30, 2010. The tenant vacated the rental unit by September 28, 2010.

On October 1, 2010, the landlord returned \$75.00 from the tenant's \$375.00 security deposit in accordance with the terms of this Residential Tenancy Agreement, as confirmed in writing by the co-tenant, Ms. AZ. The landlord withheld \$300.00 as liquidated damages. The relevant section of this Residential Tenancy Agreement reads as follows:

...Liquidated damages covers the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property...

The landlord applied for a monetary award of \$3,000.00 plus recovery of the \$50.00 filing fee for this application. The landlord entered undisputed oral and written evidence that the rental unit stayed vacant until February 1, 2011 when she rented this unit for the same \$750.00 monthly rental that the tenants had been paying. She entered undisputed written evidence of a series of advertisements placed on Craigslist, the Vancouver Province and the Vancouver Sun for one and two bedroom suites in this property. The first of these advertisements was placed the day after the tenants gave their notice that they would be leaving. The landlord gave undisputed oral testimony that there is a high vacancy rate in this part of this municipality and that the landlord is "always" advertising for tenants in this building. She testified that this rental unit was shown three or four times from the period from September until January 2011 when it was eventually leased to a new tenant. She said that she offered to reduce the monthly rent by \$50.00 to \$700.00 to an elderly man who viewed this second floor rental unit and another on the main floor. She said that this man decided to rent the main floor unit despite the higher rent (i.e., \$750.00) because it would be easier for him to access a main floor rental suite.

The landlord testified that she always reviews each term of a tenancy agreement with a new tenant, including the liquidated damages clause, to ensure that there is complete understanding of the agreement. She said that she emphasizes that tenants are responsible for the liquidated damages clause as well as any losses that result from a tenancy.

The tenant testified that the landlord did not explain that he would become responsible for the full term of the tenancy if he vacated the rental unit before the end of this fixed term tenancy. He also said that the rental unit itself was unsuitable because of noise from dogs, other tenants and parties in this building.

The tenant also said that he and his wife attempted to find new tenants for the landlord to complete the term of their tenancy. He testified that he advertised on Craigslist and found three potential tenants who viewed his rental suite and seemed interested in leasing it. He said that each time he attempted to contact the property manager she was unavailable. He did not send her an email identifying possible new tenants for this suite. He said that the property manager for the landlord is only available for showings from 8:30 until 5:00 on weekdays and that he was unable to reach her in time to keep these prospective tenants interested in leasing the rental unit. He said that he received

a return call from the property manager two days after he left a message to call him regarding one of these potential tenants. He said that during the month of September 2010 when he and his wife were still living in the rental unit, the landlord did not conduct any showings of his rental unit. He maintained that the landlord displayed little real interest in attempting to respond to his efforts to re-rent his suite to a new tenant.

The landlord denied the tenant's assertion that she did not act promptly on possible tenants that the tenant had located. She said this is her job and that the tenant did not contact her to follow up on potential new tenants for this rental suite.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Based on the evidence presented, the wording of the liquidated damages clause in this Residential Tenancy Agreement, and the oral testimony regarding the explanations provided regarding the liquidated damages clause, I find that the landlord is entitled to claim for additional losses arising out of this tenancy, including the loss of rent due to the tenant's early termination of this tenancy. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the March 31, 2011 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent from October 2010 until March 1, 2011, the last month of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord did commence immediate attempts to re-lease this rental unit, but was unsuccessful in renting it to another tenant until February 1, 2011. By taking this action, the landlord did reduce the tenant's exposure to compensation for February and March 2011.

The tenant's testimony that he attempted to locate new tenants for this rental unit indicates some acknowledgement by the tenant that he understood that he might be

held responsible for the landlord's loss of rent for the remaining months of this fixed term tenancy. I find that the tenant would not likely have taken action to advertise and try to locate new tenants if he truly believed that he would not be held responsible for remaining months on his fixed term tenancy.

I am satisfied that the landlord has discharged partially the duty under section 7(2) of the *Act* to minimize the tenant's losses. I find that the landlord is entitled to recover some of the losses incurred during the months when this rental unit remained vacant (i.e., October 2010 through January 2011).

However, the tenant presented evidence that calls into question the extent to which the landlord tried to minimize the tenant's losses for the four months claimed in the landlord's application. Although the landlord provided one example of an offer to reduce the rent by \$50.00 to attract a prospective tenant for this rental unit, I am not satisfied that this example sufficiently satisfied the need to demonstrate that the landlord had done whatever was reasonable to minimize the tenant's loss.

Based on the evidence presented and a balance of probabilities, I accept that the landlord is entitled to a monetary award of \$2,250.00, an amount that compensates the landlord for three of the four months of the landlord's claim for a monetary award. I reduce the amount of the landlord's claim by one month as I find that the landlord did not do whatever was reasonable, including reducing the advertised rent or following up with the tenant on prospective tenants to minimize the tenant's losses. Had the tenant provided more detailed information regarding his attempts to locate a new tenant and to contact the landlord about these prospective tenants, I may have reduced the amount of the landlord's claim for a monetary award further.

Since the landlord was for the most part successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$2,300.00, an amount which compensates the landlord for \$2,250.00 in loss of rent for three months and recovers the landlord's \$50.00 filing fee for this application from the tenant.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.