



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began December 1, 2010 with monthly rent of \$1100.00 and the tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00.

The landlord testified that the fixed term tenancy was to end on November 30, 2011 but that the tenants gave the landlord notice April 30, 2011 that they would be vacating May 31, 2011. The landlord stated that the tenants did vacate the rental unit May 31 and a move out inspection was conducted with the tenants on June 8, 2011.

The landlord stated that the rental property was advertised on numerous rental web sites starting the first week of May 2011. The landlord stated that the rental unit was advertised for \$1200.00 per month and that he secured a tenant for July 1, 2011 at a rate of \$1150.00 per month. The landlord stated that there is a high vacancy rate for condos in the area and that condos often take more than one month to rent.

The tenants testified that due to unforeseen circumstances they had to break the lease and vacate the rental unit. The tenants stated that they had offered to pay \$800.00 per month rent to the landlord until suitable tenants were found however the landlord had declined this offer. The tenants stated that they had also called the landlord and advised him that one of the tenant's parents was willing to take over the lease however the landlord never responded back to the tenants. The tenants stated that they had checked one of the local rental web sites during May and the property was never listed for rent on this site. The tenants stated that they had wanted to complete the move out inspection May 31 when they vacated but that the landlord's schedule could not accommodate this date.

The landlord stated that as one of the tenants had lost their job they did not want to continue the tenancy at the reduced rate of \$800.00 per month as they had no confidence that the agreement could be accomplished. The landlord also stated that this offer was 'not genuine' as it was never put in writing by the tenants. The landlord stated that he did not remember the tenants ever calling about one of their parents taking over the lease.

The landlord in this application is seeking \$1100.00 compensation for loss of rental revenue.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for for loss of revenue.

The tenants did break the fixed term tenancy however the tenants offered to continue to remain in the rental unit at a rate of \$800.00 per month to help mitigate any loss to the landlord and the landlord simply choose to dismiss this offer as not being credible. The landlord also choose to not respond to the offer of one of the tenant's parents taking over the lease which would have completely mitigated any loss of revenue to the landlord. The landlord also did not make himself available for the move out inspection until June 8, 2011 and this reflects a lack of urgency in renting the rental unit.

The landlord also, knowing that the rental market is extremely difficult for this type of rental unit (condo), advertised the rental unit at a higher rental rate than that which the tenant's were paying which potentially limited the availability of suitable tenants even further.

Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

I find that the landlord did not take the appropriate steps to mitigate their loss of rental revenue as the landlord dismissed two rental offers from the tenants and advertised a difficult to rent property at a higher rental rate of \$1200.00 per month.

The landlord's application is hereby dismissed without leave to reapply.

As the landlord has been not successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

The landlord is to return the \$550.00 security deposit and \$550.00 pet damage deposit to the tenants.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The \$550.00 security deposit and \$550.00 pet damage deposit are to be returned to the tenants upon receipt of this decision and the tenants have been issued a monetary order for the amount of \$1100.00 for these deposits.

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 8, 2011

Residential Tenancy Branch