



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, O

Introduction

This hearing dealt with an application by the landlord for an order of possession for breach, an order of possession for unpaid rent and other.

The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing in person. I found that the tenant had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

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 July 1, 2010 with monthly rent of \$1800.00 and the tenants paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. The end date of the tenancy is noted as June 30, 2011.

The landlord testified that as the tenant's had vacated the rental unit they no longer required an order of possession for breach of the tenancy agreement or for unpaid rent, therefore these portions of the landlord's application are hereby dismissed.

The landlord did not recall why the 'Other' box was checked off on the application and that it may have been for the filing fee or for damages, therefore this portion of the landlord's application is hereby dismissed.

The landlord testified that the tenant's personal relationship ended and the tenants sought to break the fixed term tenancy and the tenants provided the landlord with notice to end the tenancy by email on December 13, 2011. The landlord stated that the tenants initially requested to vacate the end of February 2011 but that when new tenants had not

yet been secured an agreement was made between the tenants and landlord that the tenants would remain in the rental unit until new tenants were found.

At the end of February one tenant vacated and one remained in the rental unit. In March the rent cheque was returned to the landlord NSF and the landlord and tenants agreed that the tenant's \$900.00 pet damage deposit would be used for ½ of the March 2011 rent.

The landlord stated that the April 2011 rent was then not paid and the landlord requested that the rental agency issue a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord and tenant agreed that the tenant's \$900.00 security deposit would be used for ½ of the April 2011 rent. The landlord stated that then instead applied the \$900.00 security deposit towards cleaning costs and repairs although that was not the agreement made with the tenant. The tenant then vacated the property on April 15, 2011.

At the time of vacating the tenant owed the landlord \$900.00 rent for March 2011 and \$900.00 rent for April 2011.

The landlord stated that in January 2011, on the advice of the first rental agency, they raised the rent from \$1800.00 to \$1900.00. When they got no response from prospective tenants the rent was reduced back to \$1800.00 in February. The landlord stated that the first rental agency advertised the property on their company web site and by word of mouth with their agents. The landlord also placed ads on Craigslist and the tenants helped advertise.

The landlord stated that they were not happy with the first rental agency as *'nothing ever came of it'* (their attempts to secure new tenants). On April 15, 2011 the landlord then hired a new rental agency. The landlord stated that ads were placed on Craigslist, Kijiji, the rental agency web site and the new agency held open houses. The new rental agency advised the landlord that they should consider a rent reduction and the landlord agreed. The new rental agency then let prospective tenants know that the rent was \$1800.00 plus utilities but that the landlord was flexible on the rent. New tenants expressed interest in the property in mid June and were then secured for July 1, 2011 with the rent reduced from \$1800.00 plus utilities to \$1700.00 utilities included.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The landlord's rental agent was aware in December 2010 that the tenants would be vacating the rental property and made the decision to advertise the rental unit at a

higher monthly rent of \$1900.00. A month later, in February 2011, after there were no responses, the rent was reduced back to the original amount of \$1800.00. During the time from January through mid April the original rental agency only advertised the rental unit on their web site and internally by word of mouth, and due to the lack of response for prospective tenants the landlord hired a new rental agency.

It was after the landlord was under contract with a new rental agency that the matter of reducing the rent was discussed and agreed to. The monthly rent was then lowered to \$1700.00 including utilities in June 2011 when prospective tenants expressed interest in renting the property during an open-house in mid June 2011. These tenants entered into a tenancy with the landlord and took possession of the rental property July 1, 2011.

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

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

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.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

The landlord has established that the tenants did not pay all of the March or April 2011 rent and a balance of \$1800.00 unpaid rent is outstanding for these months.

It must be considered however that the landlord and the landlord's rental agent, until June 2011, did not take adequate steps to minimize the landlord's loss and in fact initially raised the rent by \$100.00. Once steps were taken in mid June to minimize the landlord's loss through a reduction in rent and the inclusion of utilities in the new \$1700.00 rent, a new tenant was secured.

I do not find that reasonable efforts were taken to secure new tenants from January 2011 through mid June 2011 therefore, based on the above, the landlord is entitled to recover rent in the limited amount of \$900.00 for ½ of the month of June 2011 only.

Accordingly I find that the landlord is entitled to a monetary order for **\$2700.00**.

As the landlord has not made an application for recovery of the \$100.00 filing fee the landlord is not entitled to this amount.

Conclusion

I find that the landlord has established a monetary claim for \$2700.00 in unpaid rent. I grant the landlord a monetary order under section 67 for the amount of **\$2700.00**.

If the amount is not paid by the tenant(s), 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: November 23, 2011.

Residential Tenancy Branch