



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began August 1, 2011 with monthly rent of \$950.00 and the tenant paid a security deposit of \$475.00.

The landlord testified that the tenant ended the fixed term tenancy and did not pay the October 2011 rent. The landlord stated that they have suffered a loss of rental income and that the rental unit was not re-rented until January 2012.

The tenant stated that a verbal agreement was entered into in mid July 2011 for the tenant to rent the unit effective August 1, 2011. The tenant stated that it was agreed that the rent would be \$950.00 per month with a \$25.00 overpayment for August, a \$475.00 security deposit would be paid, a \$200.00 strata move in/move out fee would be paid and \$1200.00 would be pre paid for cable/internet use and parking. The tenant stated that on July 18, 2011 \$2850.00 was deposited into the landlord's bank account.

The tenant stated that she did not move in to the rental unit until early September 2011 however when she did move in she had to remove personal items that had been left behind by the landlord. The tenant stated that the landlord/roommate referred to drinking wine and smoking marijuana in the rental unit and the tenant became very concerned about this. The landlord/roommate refuted the tenant's testimony and stated that it was the tenant that brought up drinking and recreational drugs when they met in July 2011 to discuss the tenant moving in.

The tenant stated that after asking for the tenancy agreement one was finally provided on September 12, 2011 however the tenancy agreement indicated that the tenant was to pay \$150.00 for carpet cleaning at the end of the tenancy and this was not part of the original agreement. The tenant stated that a tenancy agreement, with the carpet cleaning requirement removed, was signed and returned to the landlord with an addendum attached. The landlord did provide a signed copy back to the tenant with changes noted on the addendum. The addendum was changed to note the \$200.00 move/move out fee, \$600.00 internet/cable fee and \$600.00 parking fee all as non-refundable. The addendum also notes that the landlord does not agree with #10 and #11 regarding the lease and non-refundable fees.

Due to the on-going issues with the lack of agreement on the terms of the tenancy agreement and the potential of illegal drug use in the rental unit, the tenant on September 23, 2011 gave the landlord 30 days written notice to vacate on October 31, 2011. The tenant stated that the landlord then demanded to have the keys returned immediately even though the tenancy had not ended and the keys were returned to the landlord by overnight express.

The tenant stated that the damage to the wall was not due to the tenant having put a poster on the wall and that the poster had been placed on the landlord/roommate. The tenant stated that a move out condition inspection report as not completed nor did the landlord provide the tenant with any opportunities to complete one. The landlord stated that that had not completed the move out inspection as the tenant had already completely vacated the rental unit..

The tenant stated that they had a friend call in regards to the ad that the landlord had placed for the rental unit on October 4, 2011 and was told that the rental unit was no longer available and the landlord already had a tenant. The landlord stated that they had entered into a verbal agreement with a tenant but that the following day the tenant never showed up to pay their deposits. The landlord stated that they then could not secure a new tenant until January 2012. The landlord stated that this housing is on the UBC campus and tenants often look for housing at the start of each semester and as the fall semester had already started it was difficult to get the unit rented.

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 are entitled to a monetary order for unpaid rent or damages.

It is acknowledged that the tenant ended a fixed term tenancy by providing the landlord with 30 days notice and that a fixed term tenancy may not be ended this way. It must be noted however that the tenancy did become frustrated when the terms of the tenancy could not be agreed to by the parties and the tenant raised serious concerns about the

landlord/roommates lifestyle and the alleged consumption of illegal drugs in the rental unit.

Residential Tenancy Policy Guideline **34 Frustration** speaks to:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

It must also be noted that the landlord demanded that the keys be returned prior to the end of the tenancy on October 31, 2011 and that when the phone number for the ad for the rental unit was called on October 4, 2011, the party was advised that a tenant had been found and the rental unit was no longer available. The landlord has submitted a bill for a rental ad however this bill does not specify that it was an ad for this rental unit or what the ad spoke to. The landlord has not submitted any evidence of the rental unit being advertised for October 2011.

The landlord has a duty to mitigate their loss and as the landlord appears to market the rental unit to staff or students of the university, it is not reasonable that the tenant should be held responsible for lost rental income when the re-renting of the unit is compromised because the semester has already been started.

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 damages¹ has a legal obligation to do whatever is reasonable to minimize the damage or loss. 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.

Therefore I find that the landlord has not established that they suffered a loss of rental income for October 2011 or any month thereafter.

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

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

Conclusion

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

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: February 6, 2012

Residential Tenancy Branch