Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for damage to the rental unit, loss of rent, liquidated damages, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled for a monetary award for the claims submitted, and in particular, whether the landlord is entitled to both liquidated damages and loss of rent.

Background and Evidence

This tenancy began on September 1, 2011 under a fixed term rental agreement set to end on February 29, 2012. Rent was $1,275 per month and the landlord holds a security deposit of $637.50 paid on September 1, 2011.

At the commencement of the hearing, the tenant concurred that he had understood and agreed with the following claims submitted to him during or shortly following completion of the move-out condition inspection report and amended on the landlord's application:

Carpet cleaning	$ 72.80
General cleaning	80.00
Liquidated damages as per 3(a)(i) of the rental agreement	300.00
To return move-in bonus as per addendum to agreement	100.00
Filing fee	50.00
Sub total	$702.80
Less retained security deposit	- 637.50
Total	**$ 65.30**

However, the parties are in disagreement over the landlord's claim for one month's loss of rent as a result of the tenant having breached the fixed term agreement by leaving early.

The landlord makes the claim on the grounds that, despite the rental agreement being for a fixed term to February 29, 2012, the tenant gave written notice on October 31, 2011 that he would be vacating the rental unit on November 30, 2011, as was the case.

The landlord's representatives stated that in spite of their concerted efforts to do so, they were unable to find a new tenancy for the rental unit to begin until January 25, 2012. While the landlord suffered a loss of nearly two months rent, the landlord claims the loss of rent for only one month.

The landlord has submitted a substantial number of invoices showing continuous newspaper advertising from November 1, 2011 through January 2012 in major newspapers. In addition, the landlord's agents gave evidence that, while approximately 10 of the 98 units in the building were vacant during the material time, they gave the subject rental unit equal or preferential exposure as it was it was one of the most desirable units in building being on the top floor with a superior view.

The tenant submitted that he would never have left the rental unit if he had been aware that he would incur the cost of loss of rent and pointed out the his reason for leaving stated on the landlord's form for tenant's notice is that the unit was "too expensive" for him. He believed that the $300 liquidated damages and return of the $100 moving bonus ended his obligations.

The notice included the tenant's consent for showing the suite from the date of the notice for the balance of the tenancy.

The landlord's agents stated that they were new to the position at the time and that they may well not have cautioned the tenant that by breaching the fixed term agreement, he would risk having to pay loss of rent.

Analysis

Section 45(2) of the *Act* states that a tenant's notice to end a fixed term tenancy agreement may not have an end date that is earlier on the end of tenancy date set by the agreement.

Clause 3(a)(i) of the rental agreement provides that:

> "To terminate the lease prior to the expiry date on Feb. 29, 2012, the tenant will be required to give notice as provided for in section 12 herein. In addition, the tenant is required to pay $300 as liquidated damages to cover administration costs – **this is not a penalty."**

Section 12 of the rental agreement, which deals with ending the tenancy and reiterates the obligation to give notice effective one month after the next rent due date on periodic tenancies, is silent on the question of ending a fixed term agreement beyond noting that at its conclusion, it may default to a month to month tenancy.

Section 3.1 of the *Residential Policy Guidelines* states that, "Where a tenant has fundamentally breached the tenancy agreement, the landlord [may]....accept the end of the tenancy ...with notice to the tenant of the intention to claim damages for loss of rent for the remainder of the term of the tenancy.

Section 3.1 later restates, "If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim.

I find both parties in this matter to be sincere and highly credible.

I accept that the landlord's agents considered that the tenant's exposure to a claim for loss of rent was self evident in the nature of the fixed term rental agreement and I accept the evidence of the tenant that he would not have breached the fixed term agreement if he had been aware of the potential claim for loss of rent..

However, I find no evidence within the written submissions provided by the landlord or in their oral evidence given during the hearing that the tenant was given notice that he would be liable for a claim for loss of rent if the landlord was unable to find new tenants for the period beginning after his departure.

Therefore, I must dismiss the part of the landlord's claim for loss of rent.

I find that the landlord is entitled to recover the previously noted repair, cleaning, liquidated damages, move-in bonus and filing fee and authorization to retain the security deposit in set off against the balance owed, a total of $702.80, with $637.50 of that recoverable through the retained security deposit and the balance by way of a Monetary Order for $65.30.

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for $65.30, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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 01, 2012.

Residential Tenancy Branch