



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord originally claimed compensation for loss equivalent to 4 months rent; the request for compensation was amended downward to reflect a request for loss of 3 months' rent. The amended calculation included a claim against the security and pet deposits totalling \$1,750.00; the application was not amended.

The male respondent testified that he was the spouse of the tenant, but he did not sign the tenancy agreement. A copy of the agreement supplied as evidence supported this submission; he had not signed the agreement. The landlord confirmed that rent had never been accepted from the male respondent. Therefore, the application was amended to remove the male respondent, who was an occupant and not a tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages and loss of rent revenue in the sum of \$7,525.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2011 and was a fixed-term ending on March 31, 2012. The tenants were required to vacate the unit at the end of the fixed-term. Rent was \$2,500.00 per month, due on the first day of each month. A pet deposit in the sum of \$500.00 was paid; a security deposit in the sum of \$1,250.00 was paid. The agreement included a \$25.00 fee for returned cheques.

A condition inspection was not completed at move-in.

On October 27, 2011, the tenant sent the landlord an email, a copy of which was supplied as evidence, which informed the landlord that the tenant had purchased a new home and would be vacating the unit on November 30, 2011.

The landlord and tenant confirmed that the tenant did attempt to locate new occupants for the home; an email dated November 13, 2011, indicated the tenant was working to find a renter, that she had several leads and that she wanted a copy of the advertisement the landlord had made. The tenant indicated she would place an ad on a popular website.

A copy of a November 15, 2011, email sent to the tenant by the landlord had 5 photographs attached and indicated advertisements had been placed on 2 popular web sites. An internet link to the property details was provided so the tenant could use it for her advertisement. As evidence, the landlord provided a copy of the advertisement referenced in the email, which indicated that the home was available December 1, 2011. The copy of the advertisement was printed at a later date; as the ad showed a reduced rent of \$2,300.00 per month.

The landlord testified that they advertised on a continual basis from the time notice was given by the tenants. It was just before Christmas and New Year; a difficult time to locate new occupants.

The tenant testified that there had been deficiencies with the home; the landlord would not disclose where the water tap was located and they could not locate the sump pump. The tenant obtained a copy of a home inspection report and submitted the cover page of the report plus photographs. The tenant stated the home had electrical issues, that breakers would trip and that the landlord was asking too much for the home; the tenant believed a reasonable rent would have been \$1,800.00 per month.

The tenant confirmed that at no time were any concerns that related to a possible breach of any material term of the tenancy placed in writing to the landlord as she did not wish to engage in negative dialogue with the landlord.

The tenant does not believe the landlord mitigated adequately and that the landlord has failed to provide evidence of on-going advertising. In January the tenant could find only

1 advertisement for the home, on a popular web site; and the ad represented the home as 4 bedrooms and 3 baths; but it is a 3 bedroom home with 2.5 baths. The landlord did not place a for rent sign on the property, which also formed a failure to mitigate.

The landlord testified that for rent signs are an invitation for vandalism.

The tenant did not pay December, 2011, rent owed. The landlord is claiming loss of December, 2011; January and February, 2012, rent revenue loss plus a \$25.00 fee for a stop payment placed on the December, 2011, rent cheque.

The tenant stated that she did not realize the fixed term ended on March 31, 2012, she thought it was to end on February 29, 2012.

The landlord advertised the unit immediately upon receiving the October 27, 2011 notice and in January, 2012, reduced the rent in the hope of attracting a renter. The landlord was able to locate new occupants effective March 1, 2012, for \$2,400.00 per month.

The landlord confirmed that they did not have a claim against the pet deposit, for damage caused by a pet.

The tenant provided the landlord with her written forwarding address on November 30, 2011.

Analysis

During the hearing both parties indicated that they wished to have the deposits considered; I also have the ability to set off any amount owed to the landlord against the deposits held in trust, by applying section 72 of the Act.

In relation to the \$500.00 pet deposit I have considered the following sections of the Act;

Section 38(1) provides:

(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides:

- (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

As the landlord did not have a claim against the pet deposit, for damage caused by a pet, the landlord was required to return the pet deposit to the tenant within 15 days of November 30, 2011. Therefore, as provided by section 38(6) of the Act, I find that the landlord is holding a pet deposit in the sum of \$1,000.00.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45(3) of the Act provides:

- 3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

There was no evidence before me which supported the tenant giving notice ending the fixed-term tenancy, as provided by section 45 of the Act.

I have considered the tenant's submission that the landlord did not adequately advertise the unit and I have rejected that claim. The advertisement submitted as evidence indicated that the unit was available December 1, 2011; which indicates the ad had been placed in November, 2011. Further, the advertisement showed rent had eventually been reduced, in an attempt to mitigate the loss of rent revenue that was the result of the tenant's breach of the Act. I find, on the balance of probabilities, this demonstrated the landlord's continued efforts to locate occupants.

The tenant did not supply evidence of any advertisement that she had placed, in an attempt to assist the landlord with mitigation of a potential loss of revenue. Further, I accept the landlord's submission that notice given ending a tenancy on November 30 would have made it more difficult to locate new occupants, as it was close to the holiday season.

Therefore, I find that the landlord is entitled to loss of rent revenue for December, 2011; January 2012 and February 2012, in the sum of \$7,500.00. The tenant did not dispute the landlord's claim for the returned cheque fee for December, 2011, rent; therefore, I find that the landlord is entitled to this fee, which was included as a clause in the tenancy agreement.

The tenant's submission that she did not notice the end date of the tenancy was March 31, 2012, is of no importance, as the landlord has not claimed loss of March, 2012, rent revenue.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposits due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the sum of \$1,250.00 and the pet deposit in the sum of \$1,000.00 in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$7,625.00, which is comprised of loss of rent revenue, a fee and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposits in the sum of \$2,250.00 in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$5,375.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: March 01, 2012.

Residential Tenancy Branch