



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application of February 14, 2012 for a monetary award for unpaid rent/loss of rent after the tenant left the fixed term rental agreement early having given only two weeks written notice. The landlord also sought to recover the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance found to be owed.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security deposit in set off against any balance found to be owed.

Background, and Evidence

This tenancy began April 1, 2011 under a fixed term rental agreement set to end on March 31, 2012. Rent was \$975 per month including utilities and the landlord holds a security deposit of \$425 paid on March 18, 2011.

During the hearing, the landlord submitted a copy of the tenant's notice to end tenancy dated January 16, 2012 with an end of tenancy date of January 31, 2012. The notice to end tenancy made reference to the tenant having "voiced complaints of unreasonable noise and disturbances on numerous occasions, to no avail."

The landlord acknowledged being aware of the tenant's concerns, but noted that the ceiling of the basement suite had been insulated to reduce sound.

He also stated that he had spoken with the upstairs tenants and submitted a letter from the tenant of another upper suite. The letter stated that the tenants living above the subject basement suite are "health care professionals who are, "courteous, friendly and considerate." She stated that she had never heard any undue disturbance from their suite, even when downstairs, and stated that sound levels were nothing more than would be expected in a wood frame multi unit dwelling. The letter further attests to the conscientiousness of the landlord in maintaining the rental building.

The landlord also stated that the applicant tenant had been known to bang on the ceiling of her unit at early evening hours when the upper tenants were engaged in normal household activity.

The tenants who live above the subject unit also submitted a letter stating that they had discussed the complaints with the landlord and they repeated assurances to him that they had been mindful of the lower tenant's concerns over sound and had been diligent in being reasonably quiet even during daylight hours.

A letter from the father of one of the upper tenants stated that he had a conversation with the father of the applicant tenant who had stayed in the basement suite. The applicant tenant's father had told him that the upper tenants did not make a lot of noise, and that his daughter's noise complaint was exaggerated and made up as a way to get out of her lease.

The landlord stated that he had advised the applicant tenant of her option to find a new tenant under an assignment or sub-let under section 34 of the *Act*, but that she had not attempted to do so.

The landlord stated that he had not been able to have a new tenant move in until April 1, 2012. He stated that he had not sought the full loss of rent on the present application as he was not aware of the full loss at the time and he had been advised by the branch that he had to apply for the security deposit within 15 days of the end of the tenancy.

The landlord stated that he had attempted to mitigate his loss by placing signage on the front of the property, a method that has consistently succeeded in the past.

Analysis

Section 45(2) of the *Act* states that a tenant may not give notice to end a fixed term tenancy on a date earlier than the end of tenancy date stated on the fixed term agreement.

Section 45(3) of the *Act* creates an exception when a tenant has advised the landlord of a breach of a material term of the rental agreement in writing, and the landlord has not corrected the breach within a reasonable time, in which case a tenant may give short notice.

In the present matter, the tenant has submitted no copy of a clear and unambiguous written statement to the landlord that she believed he was in breach to a degree she believed justified ending the tenancy early.

I am very doubtful that the landlord was in breach and I cannot consider the tenant's argument to that effect in the absence of the written declaration.

Therefore, I find that the tenant breached the fixed term agreement by leaving early. I further find, on the balance of probabilities that the 14-day notice did not give the landlord reasonable time to find a new tenant, and that the landlord is entitled to retain the security deposit in set off against his losses of two month's rent.

I further find that, having succeeded on its merits, the landlord is entitled to recover the filing fee for his application from the tenant and I issue a Monetary Order for \$50 for that purpose.

Conclusion

The landlord is authorized to retain the tenant's security deposit of \$425 in partial satisfaction for loss of rent for February 2012.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order the \$50 filing fee for this proceeding. The Order is enforceable through the Provincial Court of British Columbia and must be served on the tenant.

The landlord remains at liberty to make application for a Monetary Order to recover the balance of the loss of rent.

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: April 18, 2012.

Residential Tenancy Branch