



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application filed by the Landlords for a monetary order for unpaid rent arising from the Tenant breaking a fixed term lease early, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony provided, however, only the relevant evidence and testimony is described in this decision.

Issues(s) to be Decided

Did the Tenant breach the fixed term lease, entitling the Landlords to monetary compensation?

Background and Evidence

On or about December 27, 2011, the parties entered into a six month, fixed term tenancy agreement. The tenancy began on January 1, 2012, and the six month period was to end on June 30, 2012. Had the tenancy lasted past June 30, 2012, it would have become a month to month tenancy.

The Tenant was to pay \$1,300.00 a month in rent due on the first day of each month. The parties used the standard form tenancy agreement.

At the outset of the tenancy the Landlords collected a security deposit of \$1,300.00, which is in excess of the amount allowed under the Act. During the term of the tenancy, the parties became aware of this and the overpayment of \$650.00 from the security

deposit was offset against a rent payment. The Landlords currently hold a security deposit of \$650.00.

The portion of the tenancy agreement which deals with a pet damage deposit for pets in the rental unit is checked off as being “not applicable”. The Landlords have submitted a copy of the advertisement they used which the Tenant responded to, prior to the beginning of the tenancy. The ad states “No pets please.”

On March 30, 2012, the Tenant sent the Landlords an email notifying them she would be leaving the rental unit on May 1, 2012, some two months before the end of the six month term. The Tenant vacated the rental unit on April 30, 2012.

The Landlords are claiming for the two months of rent for May and June of 2012.

The Landlords argued that the Tenant ended the tenancy for two different reasons. Firstly, they allege the Tenant was having difficulty paying the rent. Secondly, the Tenant had pets in the rental unit which they argue was contrary to the tenancy agreement.

The Landlords began to advertise the rental unit on April 9, 2012, using a popular Internet website. They provided email evidence indicating they had several responses to the advertisements and numerous showings of the rental unit.

The Tenant argues the not pets policy of the Landlords was not clear. She argued that she was taking care of the pets for a friend, and that the pets in questions are caged rats, which pose little danger to the rental unit.

The Tenant further argued that the Landlords unreasonably withheld consent of her subleasing the rental unit. The Tenant provided email correspondence in evidence, between herself and the Landlords. In this correspondence the Tenant offers to advertise the rental unit, show it and try to sublease it. The Landlords reply, “Thanks for your offer to advertise the suite and show it but [the other Landlord] and I would prefer to do that so we can find tenants that suit us best.” However, the Landlords go on to suggest the Tenant might help the Landlords place internal advertisements at her workplace.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant breached the tenancy agreement and section 45 the Act, without authority to do so.

The fixed term tenancy agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act. Under section 45 of the Act the Tenant could not end the tenancy earlier than the fixed term date of June 30, 2012, unless she had some authority under the Act to do so.

For example, the Tenant could have ended the tenancy if she had an order from a Dispute Resolution Officer allowing her to do so. Or, if the Tenant felt the Landlords were in breach of a material term of the tenancy agreement, she could have written to the Landlords with a request to correct the breach and provide a reasonable time to do so. If the Landlords did not correct the problem within that time, then the Tenant might have ended the tenancy by giving notice earlier than the end of the fixed term, pursuant to section 45(3) of the Act.

I find that in this case the Tenant had no such authority under the Act to end the tenancy. I find the Tenant breached the tenancy agreement and section 45 of the Act by ending the fixed term tenancy agreement without authority to do so.

I further note that in this particular case, the fact the Tenant had pets in the rental unit does not have much relevance to the Landlords' claims. The tenancy did not end due to the pets issue; it ended because the Tenant left the rental unit prior to the end of the fixed term. That is the breach of the tenancy agreement that is of most relevance here as it is this which led to the Landlords' loss. In other words, it does not matter if the Tenant left because of pets or due to poor finances - she simply did not have the right to end the tenancy in any event.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on all of the above, I find the Landlords are entitled to compensation for their loss of rent due to the Tenant's breach of the Act and fixed term tenancy agreement.

As to the amount of compensation, in a claim for loss under the Act or tenancy agreement the Applicants making the claim, here the Landlords, must prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

I find the Landlords have proven a loss exists due to the breach of the fixed term tenancy agreement and the Act by the Tenant, and that they have verified the loss as being equivalent to the amount due in rent for two months.

However, I also find the Landlords did not completely mitigate their losses. This is related to the Tenant's argument that the Landlords unreasonably withheld consent for her to sublet the rental unit.

Under the Act and tenancy agreement the Landlords must not unreasonably withhold consent for the Tenant to sublet the rental unit, when the tenancy is for a fixed length of time of six months or more. An example of having a good reason to withhold consent would be if the Tenant proposed a renter to the Landlords to sublet the rental unit to, and the Landlords did a credit check on the proposed renter and found they had a bad credit history and then withheld consent for the sublet. This is not what occurred here. Here the Tenant did not put forth prospective renters. The Landlords simply told the Tenant they did not want her to advertise or show the rental unit.

While I am unable to find this is an unreasonable withholding of consent to sublet, I do find that by preventing the Tenant from advertising or showing the rental unit the Landlords failed to mitigate or minimize the loss, by limiting the range of exposure of the rental unit to the rental marketplace.

Therefore, I find the Landlords contributed to their own losses by failing to mitigate and I deduct one month of rent from the two months of rent they lost.

This leads me to find that the Landlords have established a total monetary claim of **\$1,350.00**, comprised of \$1,300.00 for one month rent, and the \$50.00 fee paid by the Landlord for this application.

I allow the Landlords to keep the security deposit of \$650.00 in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance due of **\$700.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 06, 2012.

Residential Tenancy Branch