



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an Application filed by the Landlord requesting a monetary order for alleged damages to the rental unit, for alleged unpaid rent, for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

During the course of the hearing the Landlord testified he could not prove what damages the Tenant had been done to the rental unit and was no longer claiming for this. Therefore, I dismiss the portion of the claim regarding damages to the rental unit without leave to reapply.

Issues(s) to be Decided

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

What monetary compensation is the Landlord entitled to?

Background and Evidence

The Landlord and Tenant, who are siblings, entered into a written tenancy agreement on September 1, 2008. The tenancy agreement had a fixed term of 10 years and was

to expire on August 31, 2018. The monthly rent was agreed upon as \$1,000.00 per month, payable on the first day of each month. No security deposit was paid and no condition inspection reports were performed.

The subject rental unit is in a strata complex. The Landlord testified that shortly after the fixed term tenancy agreement was signed, the strata council passed a bylaw prohibiting rentals in the building. Written evidence before me indicates the bylaw came into effect about one year after the agreement was signed.

On or about June 8, 2012, the Tenant sent the Landlord an email, notifying him she had vacated the rental unit.

The Landlord testified that it was his sister who initially wanted the ten year lease.

The Landlord testified he believed that the new strata bylaw would prevent him from renting to another party and was concerned if she walked away from the lease he could not rent anymore. He had discussed with the Tenant the possibility of sub-letting the rental unit and he was of the opinion that he could have sub-let the rental unit for as long as he wanted, or at least until the end of the ten year fixed term. Both parties agreed they had discussed the possibility of sub-letting.

The Landlord also alleges that because the Tenant vacated the rental unit he also has lost value in the rental unit property. He alleged that the rental unit is now worth less than what it should have been, since he is not able to have a rental.

Nevertheless, the Landlord further testified that he had a new renter move into the rental unit on August 1, 2012, and submitted evidence that the strata had allowed him to have a renter for this one year, fixed term tenancy. The new renter is paying \$1,200.00 per month, which is \$200.00 a month more than the rent the Tenant was required to pay.

The Landlord testified he is upset because at the end of the year he will be in the same situation he is now.

The Landlord initially wanted to claim for losses of \$62,000.00, however, as this exceeds the limit under the Act, he is claiming for losses of \$25,000.00 he alleges were due to the Tenant's breach of the fixed term tenancy.

In reply, the Tenant testified that the only reason they entered into a fixed term tenancy agreement was to appease the strata council. She testified that they heard the strata

was bringing in a no renting bylaw and they signed a ten year lease out of fear they would not be able to rent the unit after the council changed the bylaw. The Tenant alleges this was not a real lease, since they had this ulterior motive.

The Tenant testified she had no issues with sub-letting the rental unit. She testified they had talked about this alternative for several months, because during the course of the tenancy she incurred so much debt that she had no money to pay the rent anymore. The Tenant testified that the Landlord also approached her to raise the rent in the tenancy agreement so that when they sub-let the rental unit the rent could be higher.

The Tenant further testified that the Landlord consulted with his lawyer about sub-letting and when he found out it was possible, he went on vacation and did nothing about it. She testified she had no communication from him after this for quite some time. She testified she would have no problems to sub-let the rental unit and in fact she had advertised it for rent with this in mind.

In reply, the Landlord denied he stopped communicating with her and claimed he had tried to communicate with the Tenant regarding sub-letting after he returned from holidays on several occasions. The Landlord also expressed frustration with the Tenant because she had failed to pass on communication from the strata informing him there was a special assessment being levied against the strata unit owners.

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 the Act, without authority to do so, for the following reasons.

The tenancy agreement is a binding legal contract which both parties must abide by. While the parties may have entered the tenancy agreement to avoid the ban on renters being brought in by the strata, I am unable to find that this voided the agreement or this was a breach of the Act.

In British Columbia a tenancy agreement may only end if done so in accordance with the Act.

Under section 45(3) of the Act, the Tenant could not end the tenancy earlier than the fixed term date of August 31, 2018, unless there was some authority under the Act for her to do so. For example, if the Tenant had an order from the Branch allowing her to end it, or, if felt the Landlord was in breach of a material term of the tenancy agreement,

she could have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord 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.

Here the Tenant had no such authority under the Act to end the fixed term tenancy.

Section 67 of the 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.

As I have found the Tenant breached the tenancy agreement and the Act by ending the fixed term tenancy without authority to do so, I find the Landlord is entitled to compensation for loss of rent.

In order to determine the amount of monetary compensation, I will set out the test for monetary damages. In order to prove a claim in damages an Applicant, here the Landlord, must provide evidence sufficient to 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.

Since the Tenant vacated in June without paying rent and the Landlord had a new renter move into the rental unit on August 1, 2012, I find the Landlord experienced a loss of rent for June and July of 2012, in the amount of \$2,000.00. I also find the Landlord is entitled to recover half of the filing fee for the Application, in the amount of \$50.00. I have reduced the fee due to the limited success of the Applicant in his claim for \$25,000.00.

This leads me to find the Landlord is entitled to compensation of \$2,050.00 for the Tenant's breaches, subject to the offset described below.

By having a new renter move into the rental unit on August 1, 2012, the Landlord mitigated his losses as required under section 7. However, as the new renter is paying \$200.00 a month more in rent than the Tenant, I am unable to find that the Landlord will suffer a loss, as the Landlord will recoup the two month loss of rent in the first 10 months of the new tenancy, and in fact will be put in a better position by the end of the new tenancy. In effect, the Landlord will see a net gain in income in his rent due to the new tenancy agreement.

The purposes of monetary damages in claims such as these is to put the claimant back to the position they would have been in, had there been no breaches.

Policy Guideline 3 to the Act explains what happens in these circumstances:

“... In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant...”

[Reproduced as written.]

As to the Landlord's claims for loss of rent over the entire term of the fixed term tenancy, I find I must dismiss this claim. The strata has already allowed the Landlord to re-rent the subject rental unit despite the no rental bylaw. Without making any findings in this regard, it may be the rental unit is “grandfathered” under the strata legislation, as it was rented at the time the bylaw came into effect. Therefore, I find that the Landlord has not proven that he would not be able to continue to rent the rental unit after this present one year term agreement has expired, and I dismiss this portion of the claim without leave to reapply.

I also find the Landlord had insufficient evidence to prove he had suffered any loss in market value of the rental unit due to the Tenant's breach, and I dismiss this portion of the claim without leave to reapply. It is just as likely any alleged loss in value could be attributed to market fluctuations in prices or to the new bylaw by the strata.

For these reasons I conclude that, although the Tenant breached the Act and fixed term tenancy agreement, the Landlord is not entitled to a monetary order for compensation from the Tenant.

Conclusion

The Tenant breached the Act and tenancy agreement by ending a fixed term tenancy without authority to do so.

However, the Landlord has not proven he suffered a loss since he was able to re-rent the subject unit at a higher rate of monthly rent. In effect, the Landlord will realize a benefit due to the breach of the Tenant and therefore, he is not entitled to a monetary order for compensation. The other claims are dismissed without leave to reapply.

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: August 24, 2012.

Residential Tenancy Branch