



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing, the Tenant argued that the Landlord failed to add her former spouse and co-tenant as a party to these proceedings. The Landlord's agent claimed that the whereabouts of the Tenant's co-tenant was unknown but that she was entitled in any event to proceed solely against the Tenant. RTB Policy Guideline #13 (Rights and Responsibilities of Co-tenants) says at p. 1 as follows:

"Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord."

As a result, I find that the Landlord is entitled to seek compensation against one or both of the Parties named on the tenancy agreement.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2011 and was to expire on November 30, 2012 however it ended on May 1, 2012 when the Tenant moved out. Rent was \$1,100.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$525.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant contacted her in February 2012 to advise her that she might be ending the tenancy early and wanted to know what she would be liable to pay in that event. The Landlord's agent said the Tenant did not advise her when she would be moving out and she only discovered that the Tenant had vacated on May 2, 2012 when she received an e-mail from the Tenant to that effect. The Landlord's agent said she immediately advertised the rental unit in three online websites but was unable to re-rent it until August 1, 2012. Consequently, the Landlord sought three months of lost rental income as well as an agent's fee of \$550.00 for acting on behalf of the owner to find a new tenant.

The Tenant argued that on April 1, 2012 she advised the downstairs Tenant (who she believed was a co-owner) by e-mail that she would be moving out on May 1, 2012. The Landlord's agent argued that the downstairs Tenant was not a registered owner of the property and was not an authorized agent with whom the Tenant was supposed to be dealing over tenancy-related issues.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Given that the fixed term tenancy did not expire until November 30, 2012, I find that the Tenant could not end the tenancy any earlier than that date. As a result, I find that the Tenant is liable for lost rental income incurred by the Landlord. However, the Parties' tenancy agreement contains the following limiting term at clause 5(f):

“Liquidated damages: If the tenant terminates the tenancy before the date specified, then the landlord shall charge and the tenant agrees to pay the sum of \$1,050.00 liquidated damages and such sum may be deducted from the security deposit or otherwise collected. Such payment shall release the tenant from liability to rent for the balance of the term of this agreement.”

I find that this term of the Parties' tenancy agreement limits the Tenant's liability to \$1,050.00 for lost rental income for the unexpired term of the tenancy in the event that she ended the tenancy early. Although the Landlord's agent argued that this clause only applied if the Tenant gave written notice and made a payment, I find that this cannot be inferred from the above-noted term. Instead the liquidated damages clause states that it applies if the Tenant ends the tenancy early and that payment made be made up from the security deposit “or otherwise collected.” Consequently, I find that the Landlord is limited to compensation of \$1,050.00 for lost rental income.

I also find that there is no authority under the Act or the tenancy agreement to order that the Tenant bear the cost incurred by the owner of the rental property to hire a rental agent to carry out his or her responsibilities. Consequently, this part of the Landlord's application is dismissed without leave to reapply. As the Landlord has been successful in this matter, it is entitled to recover from the Tenant the \$50.00 filing fee it paid for this proceeding. Consequently, I find that the Landlord is entitled to a total monetary award of \$1,100.00.

I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$525.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$575.00.

Conclusion

A Monetary Order in the amount of \$575.00 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 17, 2012.

Residential Tenancy Branch