



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain all or part of the security deposit 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 Matters

At the start of the hearing the landlord's claim was reduced to \$1,094.70 for loss of rent revenue from July 1 to August 12, 2012. The balance of the claim was withdrawn.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,094.70 for loss of rent revenue?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The 1 year fixed-term tenancy commenced on February 1, 2012;

- Rent was \$785.00 per month, due on the first day of each month;
- A deposit in the sum of \$392.50 was paid;
- On May 31, 2012, the tenant gave written notice ending the tenancy effective June 30, 2012; and
- That on May 31, 2012, the landlord issued a letter to the tenant outlining liability for loss of rent revenue as a result of terminating the tenancy prior to the end of the fixed-term.

A copy of the written tenancy agreement was supplied as evidence.

The landlord outlined the on-going and specific advertising that occurred; effective August 13, 2012, new occupants moved into the rental unit.

The landlord supplied copies of popular web sites ads placed at the end of June, 2012. The rent was posted at \$800.00 per month, vs. \$785.00 the tenant was paying. The landlord stated that they had on-going ads for the building with rates starting at \$785.00; that they had postings with the university and military and a referral service with current occupants, who can receive \$150.00 for each new tenant they refer.

The tenant testified that she moved out due to marijuana smoke which was causing her health to suffer.

The parties confirmed that the tenancy agreement did not prohibit smoking in the rental unit. The landlord stated smoking was prohibited in the common areas only.

Analysis

Section 45(2) of the Act provides:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement.

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 that the landlord had failed to comply with a material term of the tenancy. A tenant has the burden of proving there has been a material breach of a term of the tenancy. In the absence of a tenancy agreement term that prohibited occupants of the building from smoking in their units, I find that the tenancy ended in breach of the Act.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the advertising that occurred was sufficient and that the landlord has shown they took reasonable steps to locate new occupants within a reasonable period of time. In relation to the eventual ads which requested an additional \$15.00 per month rent, I have considered Residential tenancy branch Policy, which suggests:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

I find that ads which were in effect from the point notice was given by the tenant, combined with the ads which listed specifically for the unit at what I find was not an unreasonable economic rent, was not prejudicial to the tenant. The rent requested was only \$15.00 more than what the tenant had paid each month, an increase that I find is insignificant. Despite an immediate warning given to the tenant that she could be liable

for the loss of rent revenue the tenant did not assist in locating a new occupant, which may have minimized the loss the landlord experienced.

Therefore, I find that the landlord is entitled to loss of July 2012 rent revenue in the sum of \$785.00 plus 12 days for August in the sum of \$309.70.

I find that the landlord's application has merit and that the landlord is entitled to the fee that would have been imposed for claims under \$5,000.00. Therefore, the landlord is entitled to the sum of \$50.00, to be recovered from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$392.50, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,144.70, which is comprised of loss of July , 2102 rent and 12 days of August, 2012 rent plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$392.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$752.20. 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 final and binding on the parties, unless 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: September 18, 2012.

Residential Tenancy Branch