



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served each of the Tenants with the Notice of Hearing documents by registered mail sent June 14, 2012, and with copies of his documentary evidence by registered mail sent August 7, 2012. It was also established that the Tenants served the Landlord with copies of their documentary evidence by registered mail sent August 3, 2012.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for the months of June and July, 2012?
- May the Landlord apply the security deposit towards partial payment of his monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This is a term lease from August 22, 2011, to August 22, 2012. Monthly rent is \$2,100.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$1,050.00 on August 8, 2011.

On April 20, 2012, the Tenants gave the Landlord written notice that they were moving out of the rental unit on May 31, 2012. A copy of the Tenants' notice was provided in evidence.

The Landlord's agent TG testified that she advertised the rental unit in the local newspaper once in May and placed ads in a popular on-line site on the following days:

May 2, 2012
June 1, 2012
July 19, 2012
August 14, 2012

The Landlord's agent RR stated that in his experience newspaper ads are not an effective way to advertise rental units and that he always had more success with the popular on-line site. He stated that the rental unit was still not rented, even though the Landlord had reduced the rent by \$50.00, "two weeks ago" and had added an incentive of one free month's rent if new tenants signed a 13 month lease. The Landlord did not provide copies of the newspaper ad or printouts of the on-line ads in evidence.

The Landlord's agent TG stated that she showed the rental unit 6 times in June and 9 times in July, 2012. She provided copies of two invoices that she gave to the Landlord in evidence.

The Landlord's agent testified that the rental unit remains vacant.

The Tenant testified that she was disappointed that the Landlord did not advertised the rental unit until May 2, 2012, and did not have any showings in May, 2012, because she had given her notice on April 20, 2012. The Tenant stated that the Landlord told her they had showings on May 5 and 19, 2012, but that there was no proof that anyone actually viewed the rental unit. The Tenant stated that they left the rental unit to accommodate these showings, but it didn't appear that anyone had been there when they returned.

She stated that the tenancy agreement included garden maintenance and that the Landlord did not keep it up. The Tenant stated that potential renters would have been dissuaded by the appearance of the dead lawn and many weeds and thistles in the yard.

The Tenant submitted that advertising only in one on-line web site, only once a month, was not sufficient because the ad would drop down to the bottom of the list and therefore not be seen by as many people.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The invoices provided by the Landlord indicate that the Landlord's agent spent 9 hours weeding and 2 hours lawn mowing in June, 2012; and an additional 26 hours weeding and 2 hours lawn mowing in July, 2012. Based on the Tenant's testimony and photographic evidence and the documentary evidence provided by the Landlord, I find that the Landlord did not sufficiently maintain the gardens and yard of the rental unit and that this would likely have been a deterrent to potential renters.

I am satisfied the Tenants breached their fixed term tenancy agreement by ending the tenancy early. I am satisfied the Tenants notified the Landlord of their intent to end the tenancy May 31, 2012 by providing written notice on April 20, 2012. Yet, the rental unit remains vacant and available for rent as of the day of this Hearing.

Where a rental unit is available for rent for several months the issue of mitigation is paramount, as provided in part 4. of the test outlined above. The Tenant raised the question as to when advertising efforts commenced. The Landlord did not provide any documentary evidence to demonstrate when advertising commenced, the frequency of advertisements, the content of the advertisements, or the amount advertised as the rental rate at which times. When a Landlord is claiming multiple months of loss of revenue, I find it reasonable to expect that the Landlord would provide copies of at least some of the advertisements, receipts for advertising costs, or a schedule as to timing and placement of various advertisements and at what rental rate.

Considering the Landlord's claim for several months of loss of revenue and the lack of documentary evidence; and the lack of yard maintenance, I find I am not satisfied that the Landlord has demonstrated that sufficient efforts were made to minimize revenue loss. Therefore, I do not award the Landlord any loss of rent for June, 2012, and onwards and the Landlord's claim is dismissed without leave to re-apply.

The Landlord has not been successful in his claim for loss of revenue, and therefore I order that the Landlord return the security deposit to the Tenants immediately. I hereby provide the Tenants a Monetary Order in the amount of \$1,050.00, representing return of the security deposit. No interest has accrued on the security deposit.

Conclusion

The Landlord's application is dismissed without leave to re-apply.

I hereby provide the Tenants a Monetary Order in the amount of **\$1,050.00** for service upon the Landlord. This Order d may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 4, 2012.

Residential Tenancy Branch