Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to dispute a rent increase.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue/unpaid rent; is the Tenant entitled to a rent refund as a result of an illegal rent increase; should the Landlord retain all or part of the security deposit or should it be returned to the Tenant; and is the Landlord entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this has been a long term tenancy, that rent was due by the first day of each month, that they regularly communicated by email, and that the Tenant paid a $200.00 security deposit. The Tenant believes the deposit was

paid sometime in 2004 and the Agent for the Landlord believes it was paid sometime in 2002.

The Landlord and the Tenant agree that in February of 2011 the Tenant was paying monthly rent of $431.00; that on February 25, 2011 the Landlord sent the Tenant an email, in which he proposed that the rent be increased to $475.00, effective April 01, 2011; that the Tenant responded to the email on that date and agreed to the proposed rent increase; that the Tenant began paying the increased rent on April 01, 2011; and that the rent had not been increased in the year prior to April 01, 2011. Copies of the aforementioned emails were submitted in evidence. The Tenant stated that she only agreed to the proposed rent increase because she believed the proposed increase was compliant with the allowable annual rent increase.

The Landlord and the Tenant agree that the Landlord did not provide the Tenant with any further notice of the aforementioned rent increase.

The Landlord and the Tenant agree that the Landlord served the Tenant with a Notice of Rent Increase, which declared that the rent would increase from $431.00 to $448.00, effective February 01, 2013. The Agent for the Landlord stated that this Notice was served in error.

The Tenant stated that in November of 2012 she told the building manager that she would be vacating the rental unit, and that she would vacate prior to January 01, 2013. The Agent for the Landlord stated that the building manager did tell her that he had been informed that the Tenant had purchased a home and would be vacating, but that he had not been informed of when the unit would be vacated.

The Landlord and the Tenant agree that the Tenant provided the Landlord with her notice to vacate, via email, sometime in the beginning of December. The parties agree that the rental unit was vacated on December 14, 2012 and that no rent was paid for December of 2012. The Landlord is seeking compensation for unpaid rent for December of 2012.

The Landlord is seeking compensation for lost revenue from January of 2013, arising from the improper notice provided by the Tenant. The Agent for the Landlord stated that the rental unit has not yet been rented; that it was advertised in the local newspaper sometime in December; that she is not certain when the advertisement was placed in the paper but she believes it was in the last few days of December; that when the advertisement was placed in the newspaper the unit was also advertised on an internet site associated to that newspaper advertisement; and that the rental unit has since been shown to several potential renters. The Landlord submitted no evidence to corroborate that the rental unit was advertised in the local newspaper or the associated internet site. The Tenant stated that she has checked the advertisements in the local newspaper since December 15, 2012 and she has been unable to locate an advertisement for the rental unit.

The Tenant stated that she had people interested in renting the unit and that she forwarded that information to the Agent for the Landlord and the building manager. She stated that she also advertised the rental unit on a popular internet site and when she informed the Agent for the Landlord of her actions, she was told to remove the advertisement.

The Agent for the Landlord agreed that she told the Tenant to remove the advertisement she had placed on a popular internet site and that she did not contact any of the names provided to her by the Tenant. She stated that the Landlord had not recently viewed the rental unit; that the Landlord had not determined how much rent to charge for the rental unit; and that the Landlord did not have keys to the rental unit, so it could not be viewed prior to the end of the tenancy.

Analysis

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations; ordered by the director on an application under subsection (3); or agreed to by the tenant in writing.

I find that the Tenant agreed, in writing, to increase the rent from $431.00 to $475.00 in the emails the Tenant and the Landlord exchanged on February 25, 2011. In determining that this email exchanged serves as written agreement, I was heavily influenced by the undisputed evidence that the emails had been received by the other party, that the parties regularly communicated via email, and that both parties were able to generate a written copy of the emails, which they both submitted them as evidence.

In determining this matter I placed no weight on the Tenant's argument that when she agreed to the increase she did not understand that the Landlord could not impose a rent increase in that amount. Landlords are not restricted to increase rent in amounts calculated in accordance with the regulations when the Tenant agrees, in writing, to a proposed rent increase.

Section 42(2) of the *Act* requires a landlord to give a tenant notice of a rent increase at least three months before the effective date of the increase. To increase the rent on April 01, 2011, the Landlord was required to give the Tenant notice of the increase prior to January 01, 2011. The earliest effective date of the rent increase proposed on February 25, 2011 would be June 01, 2011. In determining this matter I was guided by section 42(4) of the *Act*, which stipulates that if a landlord's notice of a rent increase does not comply with sections 42(1) or 42(2) of the *Act,* the notice takes effect on the earliest date that complies.

As the Landlord should not have collected the rent increase in April and May of 2011, I find that the Tenant is entitled to a rent refund of $88.00 for those two months.

Section 42(3) of the *Act* stipulates that a notice of rent increase must be served in the approved form. Section 10(2) of the *Act* stipulates that deviations from an approved

form that do not affect its substance and are not intended to mislead do not invalidate the form used.

Although the email that was sent on February 25, 2011 was not notice of a rent increase on the form generated by the Residential Tenancy Branch, I find that it provided all the relevant information on the approved form and should, therefore, be accepted as proper written notice of the increase. In reaching this conclusion I was influenced by the fact that the email informed the Tenant that the rent has not been increased since February of 2007; it informed the Tenant that the rent would increase to $475.00; and it informed the Tenant that the increase would be effective April 01, 2011. This information is the most relevant information on the form generated by the Residential Tenancy Branch. Although the email does not specify the name/address of the Tenant or the Landlord; it does not specify the current rent; and it is not signed by the Landlord, I find that this information does not affect the substance of the notice of rent increase.

I note that the Notice of Rent Increase that declared that the rent would increase from $431.00 to $448.00, effective February 01, 2013, has no bearing on this matter, as it does not serve to negate the rent increase previously imposed. In reaching this conclusion I was heavily influenced by the Agent for the Landlord's testimony that the Notice was served in error, and the absence of any evidence that shows the Notice was served for the purposes of reducing the rent the Tenant was paying during the latter portion of the tenancy.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on December 31, 2012 in accordance with section 45 of the *Act*, the Tenant was required to give written notice of her intent to vacate on, or before, November 30, 2012.

Section 53 of the *Ac*t stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the written notice that was given by email in December of 2012 was January 31, 2013.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenant had not properly ended this tenancy by December 01, 2012 and she occupied the rental unit for at least 14 days in December, I find that the Tenant was obligated to pay rent when it was due on December 01, 2012.

I find that the written notice provided to the Landlord in December of 2012 did not give the Landlord the right to regain possession of the rental unit until the effective date of the notice, which was January 31, 2013, or until the Tenant had physically vacated or abandoned the rental unit on December 14, 2012. I find that the late notice did, therefore, interfere with the Landlord's ability to rent the rental unit for January 01, 2013.

Section 7(2) of the *Act* requires a landlord who is claiming compensation for a loss that results from a tenant's failure to comply with the *Act* to do whatever is reasonable to minimize the loss. In these circumstances, I find that the Landlord had an obligation to advertise the rental unit in a manner in a timely manner.

I find that the Landlord has submitted insufficient evidence to show that the rental unit was advertised in a timely manner. In reaching this conclusion, I was heavily influenced by the testimony of the Agent for the Landlord, who stated that an advertisement for the unit was placed in the paper in the last few days of December. As the rental unit was vacated on December 14, 2012, I find that the advertisement should have been placed no later than December 17, 2012. I find that the Landlord failed to mitigate the loss of revenue when the Landlord did not advertise the rental unit in a timelier manner.

In determining this matter I have placed little weight on the Tenant's testimony that she could not find an advertisement for the rental unit in the local paper. Even if the Landlord had advertised the rental unit in the last few days of December, as the Agent for the Landlord alleges, I find that the unit should have been advertised prior to that date.

I find that the Landlord also failed to mitigate the loss of revenue when the Landlord did not make contact with the names of prospective tenants provided by the Tenant. Had the Landlord contacted these individuals, I find it entirely possible that the rental unit would have been rented for January 01, 2013. I find it entirely irrelevant that the Landlord had not recently viewed the rental unit and that the Landlord did not have keys to the rental unit, as the Landlord had the right to access the unit with proper notice and to have a locksmith provide access to the unit if necessary.

As the Landlord did not properly mitigate the loss of revenue experienced for January of 2013, I dismiss the Landlord's claim for lost revenue.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of $88.00, which represents a rent refund from April and May of 2011.

I find that the Landlord has established a monetary claim, in the amount of $525.00, which is comprised of $475.00 in unpaid rent and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. After offsetting the two awards, I find that the Tenant owes the Landlord $437.00.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of $200.00, in partial satisfaction of this monetary claim. It is difficult to

ascertain the interest due to the Tenant on the security deposit, as the Landlord believes the deposit was paid sometime in 2002 and the Tenant believes it was paid sometime in 2004. I will average the estimate of each party and determine the interest on the basis that the deposit was paid on January 01, 2003. On the basis of this calculation, I find that the Tenant is entitled to interest of $7.08, and that the Landlord may retain this amount in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount $229.92. 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 15, 2013

Residential Tenancy Branch

RTB-136

Now that you have your decision…

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
  Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
  Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
  Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
  Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
  Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
  (Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca