



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and FF

Introduction

This hearing was convened on the landlord's application of October 15, 2012 seeking a monetary award for two weeks loss of rent on the grounds that the loss resulted from the tenant having given late notice. The landlord also sought to recover the filing fee for this proceeding from the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for the loss of rent and filing fee?

Background and Evidence

This tenancy began on October 15, 2011 under a fixed term rental agreement set to end on August 31, 2012, then defaulting to a month to month tenancy. Rent was \$1,095 per month due on the first and the landlord held a security deposit of \$547.50.

As a matter of note, the tenant had originally entered into the agreement with the owner of the rental building who had subsequently engaged the services of the current property management company.

The tenant stated that she had been given assurance by the original landlord that there were no rent increases forthcoming after the tenant had informed her that the rent was at the limit of her budget. The tenant said she was surprised, on returning from an absence from the rental unit on August 9, 2012 to find a notice of rent increase in her mail box which she had not checked for months as she had customarily communicated by email with the original landlord.

.

The notice advised of a rent increase to come into effect on September 1, 2012.

In response, on August 10, 2012, the tenant gave notice to end the tenancy to the property manager on August 31, 2012.

The tenant said she then did everything she possibly could to assist the landlord in finding new tenants including inviting the property manager to show the unit whenever she wished, keeping the rental unit presentable and providing vacant possession by September 1, 2012. The tenant also voluntarily surrendered her security deposit to cover the loss of rent for the first half of September.

The tenant stated that the property manager had reduced the chance of finding a new tenant for the beginning or middle of September 2012 by advertising the rental unit at \$1,142, the rate that had been set by the notice of rent increase.

The landlord gave evidence that she had begun advertising the rental unit almost immediately on four commonly used web sites, including her corporate site.

Ironically, having failed find a new tenant for September, the property manager subsequently reduced the adverted rent to the \$1,095 it had been previously for the respondent tenant.

Analysis

Section 45 of the *Act* stipulates that a tenant's notice to end a tenancy must be given at least one full month advance of the end date, and must be served on a day before the rent due date of the month in which it takes effect. In other words, to have given notice for August 31, 2012, the tenant would have to have served notice to later than July 31, 2012.

Irrespective of the tenant's wise decision to end a tenancy when she learned that the rent was increasing beyond her budget, I find that that the 21-days notice she gave falls short of that required under section 45 of the *Act*.

I further find that the property manager met her obligation to do whatever is reasonable to minimize the loss by advertising the rental unit quickly and widely as required under section 7 of the *Act*.

I further find that the initial attempt to begin a new tenancy at an increased rate that was within the allowable annual increase did not breach the landlord's duty to minimize the loss.

Therefore, I find that the tenant must compensate the landlord for the loss of rent for the last two weeks of September 2012, an amount of \$547.50.

However, I accept the evidence of the tenant that the original landlord gave her reason to believe that she would not be faced with a rent increase as early as she was. While I do not find that of sufficient weight to nullify the tenant's responsibility for the September 2012 rent, I do find it a contributing factor to the creation of this dispute. Therefore, I decline to find the tenant responsible for the landlord's filing fee for this proceeding.

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$547.50 for service on the tenant.

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: January 11, 2013

Residential Tenancy Branch

