



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and pet damage deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matters-There appeared to be a clear language barrier with the landlords, as both landlords had difficulty in understanding me and the questions I presented, to the point many of their responses to my questions were not applicable to the questions.

I offered the landlords an opportunity to obtain an interpreter and the female landlord said that the landlord could serve in that role; however the female landlord continued to provide the majority of the oral evidence.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation, to retain the tenant's security deposit and pet damage deposit, and to recover the filing fee?

Background and Evidence

The tenant provided undisputed evidence that his tenancy started on July 1, 2007, that the ending monthly rent obligation was \$1250, and that he paid a security deposit in the amount of \$575 on June 22, 2007, and a pet damage deposit in the amount of \$250 on July 1, 2007.

The rental unit is on the lower level of a single family dwelling and the tenant explained that when he first started the tenancy, the landlords occupying the upper level were different owners.

The present landlords purchased the home during the tenancy and now occupy the upper level.

The parties agreed that the tenancy ended on June 30, 2013, when the tenant vacated the rental unit.

The landlords listed the amount of \$3860.71 in their application as their monetary claim, without providing a detailed calculation as to the breakdown of this claim.

When asking for an explanation, the landlords explained that their monetary claim now was \$1910.71, which comprised of loss of rent revenue and advertising costs.

The tenant said that he understood the landlords' claim, despite there being no detailed calculation; as a result, the hearing proceeded.

The landlord's relevant documentary evidence included the most recent tenancy agreement, a copy of the tenant's notice to vacate, dated May 15, 2013, informing the landlords he was vacating the rental unit on June 30, 2013, and a copy of a billing statement from the local newspaper, dated June 21, 2013.

In support of their application, the landlord submitted that the tenant gave insufficient notice that he was ending the tenancy on June 30, 2013, as the end of the fixed term was September 30, 2013, resulting in a loss of rent revenue.

The landlords contended that the onus was on the tenant to find another tenant to take over the balance of the fixed term, stating that they informed the tenant that if he found a new replacement tenant July 1, 2013, he could leave without penalty.

In response to my question the landlord said that she began advertising the rental unit on June 14, 2013, in the local newspaper. The landlord further contended that the rental unit was advertised on Craigslist earlier than that date.

In response to the landlords' application, the tenant submitted a copy of the original tenancy agreement with the original tenancy agreement with the original landlord, starting on July 1, 2007, another tenancy agreement with the current landlord, dated

October 16th, 2011, another tenancy agreement with these landlords signed October 20, 2012, a written notice to the landlords from the tenant, dated May 15, 2013, that he was vacating the rental unit on June 30, 2013, with an attached Mutual Agreement to end the tenancy, another written notice to the landlords, dated June 21, 2013, confirming the end of the tenancy and providing a forwarding address, a condition inspection report, filled out by the tenant, which the tenant said the landlord refused to sign, photographs of the rental unit depicting the condition of the rental unit at the end of the tenancy, a timeline of the landlords' efforts to advertise the rental unit, an email to the landlords from the tenant, dated June 13, 2013, suggesting to the landlords that the ad for the rental unit be placed on Craigslist, and email communication between the parties regarding the landlord placing an ad in the local newspaper, an email from the tenant to the landlords arranging showings for the rental unit, and a photo of the small sign posted on the premises, showing the rental unit was available for August 1, 2013.

The tenant contended that although the parties signed a form of a fixed term tenancy agreement, he was assured by the landlords that they would not hold him to the fixed term and that rather, the tenancy would continue to be on month to month basis as it had been since 2007. The tenant contended that he signed this document to insure cordial relations as he shared a home with the landlords. The tenant further contended that as proof of these statements, there was a term added to the last tenancy agreement, stating that the terms involving the fixed term were to be negotiated

The tenant said that as a gesture of good will, he gave the landlords 45 days advanced notice that he was vacating the rental unit, and reiterated that the landlords assured him that they did not intend to require that the tenant comply with the fixed term.

The tenant said that when the landlords served him with the notice of their application for dispute resolution and of the hearing, the male landlord said this was to "protect" them.

The tenant submitted that as to the landlords' attempt at advertising the rental unit, as of May 26, the landlords had taken no photos of the rental unit or placed an ad in any media, despite having received his notice to end the tenancy on May 15. To assist in facilitating the re-rental, the tenant offered to take photos of the rental unit and send them to the landlords; at landlords accepted this offer and the photos were sent the next day, according to the tenant.

The tenant further submitted that 17 days following his notice, the landlords place one ad on UsedVictoria.com, and as the ad was never renewed, it kept falling further and further down the results list. The tenant said the ad expired on July 2.

On June 5, the tenant sent an email to the landlords offering to assist in showing the rental unit, and on June 13, one month after receiving notice, the tenant emailed the landlords suggesting other advertising options, according to the tenant.

The tenant further submitted that on June 16, the landlords placed a one-line ad in the local newspaper, which was run for a week and never renewed. On June 30, the landlords placed another ad on Craigslist

The tenant said that on July 2, the landlords placed a small sign on the front yard, showing availability of the rental unit on August 1, 2013.

The tenant also contended that there was no move-in condition inspection report and that the landlords refused to perform a move-out inspection.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, *the landlord in this case*, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the landlord's claim that they are entitled to loss of rent revenue, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before, I find the evidence that the parties entered into a fixed term agreement, set to expire on September 9, 2013, to be unclear. The tenant provided clear and convincing testimony that despite the parties having signed a tenancy agreement for that fixed term, the landlords further added a hand written addendum

which stated that the tenant was to vacate by September 30, "subject to renegotiation prior to that date."

Additionally, the landlord is required under section 7(2) of the Act to take reasonable measures to minimize their loss.

I find that a reasonable measure would include advertising the rental unit immediately and to make consistent efforts in renewing the advertisements.

In the case before me, I find the tenant served a written notice to the landlords on May 15, that he was vacating the rental unit by June 30, 2013 and I also find that the landlords submitted insufficient evidence that they began taking reasonable efforts to re-rent the rental unit or site at a reasonably economic rent as soon as possible.

In reaching this conclusion, I relied on the tenant's documentary evidence and detailed timeline, as the landlords failed to provide their own documentary evidence otherwise, with the exception of a billing statement from the local newspaper, showing a one week ad beginning on June 14, 2013. I also was unable to determine the nature of the advertisement without any proof being submitted by the landlord.

In the case before, the landlord failed to submit proof of the nature and frequency of the advertising and therefore I was unable to examine the evidence to ensure that the landlord met their requirement to take reasonable measures to minimize their loss. Without such proof, I find the landlord submitted insufficient evidence of step 4 of their burden of proof and I dismiss their claim for loss of revenue for June 2012.

I find the landlords made very little efforts to re-rent the rental unit, and that none were taken until June 2, 2013, with an ad on Craigslist which after the initial listing was not renewed. I find these minor efforts to be insufficient to prove that the landlords took reasonable measures to minimize their loss.

As I have found that the landlords submitted insufficient evidence that they began without delay to re-rent the rental unit at a reasonably economic rate, I cannot conclude that the landlords have met the 4th step of their burden of proof.

I therefore dismiss the landlord's monetary claim for loss of rent revenue, without leave to reapply.

In relation to the landlords' claim for advertising fees, I find that the landlords have chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business. Therefore, I find that I do not have authority to award the landlord advertising fees, as they are costs which are not named by the *Residential Tenancy Act*.

I likewise dismiss the landlords' request for recovery of the filing fee as I have dismissed their application for monetary compensation.

I must now consider the issue of the security deposit and the pet damage deposit held by the landlords.

Under section 38 (1)(d), I find the landlord properly filed an application claiming against the tenant's security deposit for loss of rent revenue, even though the landlords failed to conduct a move-out inspections; however, pursuant to section 38 (7) of the Act, a pet damage deposit may be used only for damage caused by a pet.

As the landlords have not claimed for damage caused by a pet, I therefore find that the landlords possessed no such right to make a claim against the pet damage deposit and was required to return the tenant's pet damage deposit within 15 days of the later of the date the tenancy ended or the date the landlord received the tenants' written forwarding address. In this case the later of those two dates was June 30, 2013, the date the tenancy ended, as the landlords received the tenants' written forwarding address on June 21, 2013, and the landlords have not returned the tenant's pet damage deposit.

Therefore pursuant to section 38(6)(b), the landlord must pay the tenant double the amount of the pet damage deposit of \$250, or \$500.

I find the tenant is entitled to a return of his security deposit of \$575, plus interest of \$13.04.

Due to the above, I find the tenant is entitled to a monetary award of \$1093.70, which the amount of his security deposit of \$575, interest of \$13.04, his pet damage deposit of \$250, doubled to \$500, and interest of \$5.66 on the tenant's pet damage deposit.

Conclusion

The landlords' application for dispute resolution for monetary compensation has been dismissed.

The tenant is granted a monetary award of \$1093.70 for the reasons stated above. I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$1093.70, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both the applicant and the respondent.

Dated: September 24, 2013

Residential Tenancy Branch

