Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creighton & Associates Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSD, MNR, MND, 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, unpaid rent, and alleged damage to the rental unit, for authority to retain the tenant's security 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.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The evidence of the parties shows that this one year, fixed term tenancy began on March 29, 2013, actually ended on May 15, 2013, when the tenant vacated the rental unit, monthly rent was $3000, and the tenant paid a security deposit of $1500.

The landlord's monetary claim is as follows:

Unpaid rent, May	$3000

Loss of rent revenue, June and July	$6000
Carpet cleaning	$231
Suite cleaning	$260
Repairs to the closet door	$133.29
Breaking the lease	$1000
Damage to the fridge and baseboards	$250
TOTAL	**$10,874.29**

The landlord's relevant documentary evidence included the written tenancy agreement, a carpet cleaning invoice, a receipt for the door repair, a cleaning invoice, and photographs of the rental unit.

The tenant's relevant documentary evidence included a written statement as to the events leading to the end of the tenancy, an email from the landlord offering another suite, and a written statement from a witness stating that she helped the tenant clean the rental unit and shampoo the carpet, and that there was no damage to the closet door or baseboards. The witness did acknowledge damage to the master bedroom bathroom door.

Landlord's testimony in support of their application-

The landlord submitted that he received notice from the tenant toward the end of April, in a telephone call, informing the landlord that she was vacating the rental unit by the end of May.

The landlord agreed that he understood that the rental unit would be vacant by the end of May and began advertising the rental unit on May 1, by posting their ad on Craigslist and other websites.

In response to my question, the landlord said that he never lowered the asking price for monthly rent during the entire time it was advertised.

The landlord submitted that they are entitled to $1000 as liquidated damages, due to the agreed upon term in the tenancy agreement requiring the tenant to pay the same in the event the tenant ended the tenancy earlier than the fixed term. The landlord stated that their advertising occurred on free online websites and that he showed the rental unit 12-20 times.

The landlord agreed that there was no move-in or move-out inspection of the rental unit and therefore there were no condition inspection reports. The landlord said that the rental unit was new at the start of the tenancy.

The landlord agreed that the carpet was not dirty, but is claiming the cost of cleaning as it was required in the tenancy agreement, and for suite cleaning, as the rental unit required cleaning.

The landlord agreed that the photographs were taken after the tenancy ended.

The landlord agreed that the expenses for cleaning and repair are not as important to him as the matter of unpaid rent and the liquidated damages.

Tenant's response to the landlord's application-

In response, the tenant agreed that the door was broken and that she understood the terms of the liquidated damages clause, but did not understand why she should pay rent for June and July, as she did not live in the rental unit.

The tenant denied that the rental unit or the carpet required cleaning.

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.

Unpaid rent for May-

Under the terms of the tenancy agreement, the tenant was required to pay rent on May 1, 2013, and I find that she failed to do so, despite residing in the rental unit through May 15, 2013. I therefore find the landlord is entitled to a monetary award of $3000, the amount of monthly rent due.

Loss of rent revenue-

As to the issue of unpaid rent for the June and July, 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 me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, March 31, 2014, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlord failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion due to the landlord's failure to submit any evidence of their attempts to advertise the rental unit, and I was therefore unable to examine the form, content and frequency of the advertisements. I was further persuaded by the landlord's admission that they never reduced the amount of the requested monthly rent, which I find to be another reasonable measure in seeking to minimize their loss. If the landlord had failed to re-rent the rental unit after one full month of advertising, I would expect that the landlord would reduce the monthly rent requested in order to attract a new tenant as quickly as possible, and then seek the rent difference to the end of the fixed term, which they are entitled to do.

As I find the landlord submitted insufficient evidence that they have met step 4 of their burden of proof, I dismiss their monetary claim for loss of rent revenue for June and July 2013, in the amount of $6000.

Liquidated damages-

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenant.

In the case before me, the landlord failed to submit convincing evidence that the amount of $1000 was a genuine pre-estimate of costs to re-rent the rental unit when the only advertising used by the landlord was through no-fee websites.

While I find that the liquidated damages should be struck down as being a penalty, I find the landlord should be awarded an amount due to this clause in the tenancy agreement

and that the amount listed in the tenancy agreement may be considered as an upper range of the amount awarded to the landlord according to this section of the Policy Guideline. I find a reasonable amount under these circumstances to be $750 and I therefore award the landlord the amount of $750.

Carpet cleaning-

While the landlord argued that the tenant should be obligated to pay for a carpet cleaning due to the clause in the tenancy agreement, I disagree. The clause referred to by the landlord states that the tenant will be responsible for cleaning the carpet at the end of the tenancy, if the carpet was new or professionally cleaned at the beginning of the tenancy.

The tenant submitted that she shampooed the carpet, and the landlord acknowledged that the carpet was not dirty at the end of the tenancy, which led me to conclude that the tenant fulfilled her obligation to professionally clean the carpet.

I therefore dismiss the landlord's claim for $231 for carpet cleaning.

Suite cleaning, damage to fridge and baseboards-

I find the landlord submitted insufficient evidence to prove that the tenant damaged the fridge or baseboards or left the rental unit unclean, as the landlord provided no condition inspection report, or photos from before the tenancy began. I was unconvinced of the damage to the refrigerator door as depicted in the landlord's photographic evidence, as I did not have a similar photo from before the tenancy began.

I therefore dismiss the landlord's monetary claim of $260 for suite cleaning and $250 for damage to the refrigerator door and baseboards.

Damaged door-

As the tenant agreed to this amount, I find the landlord is entitled to a monetary award of $133.29, as shown by the landlord's receipt.

I award the landlord recovery of their filing fee $100.

Due to the above, I find the landlord is entitled to a total monetary award of $3983.29, comprised of unpaid rent of $3000 for May 2013, the liquidated damages of $750, repair for a damaged door for $133.29, and the filing fee of $100.

Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlord's request, I direct them to retain the tenant's security deposit of $1500 in partial satisfaction of their monetary award of $3983.29 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of $2483.29, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord 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 tenant is advised that costs of such enforcement are recoverable from 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* and is being mailed to both the applicant and the respondent.

Dated: October 31, 2013

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Residential Tenancy Branch