



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from December 1, 2012 to November 30, 2013. Monthly rent of \$1,150.00 is due and payable in advance on the first day of each month, and a security deposit of \$575.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

In writing on July 8, 2013 the tenants gave notice to end tenancy effective July 31, 2013. A move-out condition inspection report was completed with the participation of both parties, and the tenants provided their forwarding address on the report.

On-line advertising for new renters was begun almost immediately after the landlord received the tenant's notice, and new renters were found effective November 1, 2013. The landlord's application for dispute resolution was filed on August 15, 2013.

In response to inquiries by the tenant during the hearing, the landlord's agent testified that while the rent was initially advertised at \$1,150.00 per month after the tenant's notice was received, the landlord undertook some painting in the unit, and from on or

about August 6, 2013 the advertised rent was increased from \$1,150.00 to \$1,300.00. Subsequently, from on or about October 24, 2013, the rent was advertised at a reduced amount of \$1,250.00, which is the amount for which the landlord successfully re-rented the unit effective November 1, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence, the testimony of the parties and the relevant statutory provisions, I find that the tenants' manner of ending the fixed term tenancy does not comply with the relevant statutory provisions. I also find that the landlord

undertook to mitigate the loss of rental income by undertaking to advertise for new renters in a timely fashion, however, the level of rent advertised by the landlord will be addressed further below.

The undisputed compensation claimed by the landlord of **\$1,186.15** is as follows:

\$300.00: *liquidated damages*
\$1,150.00: *unpaid rent for July 2013*
\$25.00: *fee assessed for late payment of rent*
\$34.23: *hydro (August, September & October)*
\$50.48: *gas (Fortis) - (August, September & October)*
\$25.19: *replacement of fire extinguisher*
\$131.25: *carpet cleaning*
\$100.00: *filing fee*

In relation to the disputed amount concerning loss of rental income claimed for August, September and October, Residential Tenancy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent," and provides in part as follows:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

Following from the above, I find that the landlord has established entitlement to loss of rental income totalling **\$3,250.00** for the 3 months in question, as follows:

August: \$1,100.00 (\$1,150.00 - \$50.00)

September: \$1,100.00 (\$1,150.00 - \$50.00)

October: \$1,050.00 (\$1,250.00 - \$1,150.00)

The findings set out immediately above reflect efforts undertaken by the landlord to mitigate the loss of rental income which, however, were limited by an increase in the level of rent advertised, as well as the successful re-renting of the unit at a higher level of rent for November, which is the final month of the fixed term. Specifically, the amount sought by the landlord for each of August and September is nominally reduced by \$50.00, and the amount sought for October is reduced by \$100.00, which is the difference between the tenants' rent (\$1,150.00) and the amount for which the landlord successfully re-rented the unit in November.

I therefore find that the landlord has established entitlement to compensation in the total amount of **\$4,436.15** (\$1,186.15 + \$3,250.00)

I order that the landlord retain the security deposit of **\$575.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$3,861.15** (\$4,436.15 - \$575.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,861.15**. Should it be necessary, this order may be served on the tenants, filed in the 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 *Residential Tenancy Act*.

Dated: November 21, 2013

Residential Tenancy Branch

