



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,850.00 for the loss of July and August 2013 rent revenue?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- On July 4, 2013 a month-to-month lease agreement was signed by the tenant and female landlord;
- The tenancy was to commence July 15, 2013;
- Rent was \$1,900.00 per month; and
- A deposit in the sum of \$1,000.00 was paid.

The tenant testified that the \$1,000.00 payment was recorded as a damage deposit, not a security deposit. The tenant pointed out that the male landlord's signature was recorded later, when she was not present. The tenant said she did not receive a copy of the agreement until she was served with the hearing documents.

A copy of the lease agreement was supplied as evidence. Clause 6 was initialled by the tenant; altering the agreement from a 1 year fixed term to month-to-month. Clause 9 was initialled by the tenant, confirming payment of a security deposit in the sum of \$1,000.00 made on July 4, 2013.

The landlord and tenant agreed that the unit was listed for sale and that some items would be installed prior to the start of the tenancy. The landlord said that she agreed to the following:

- Order curtain rods for both bedrooms;
- Install toilet paper rolls in each bathroom;
- Complete a drywall repair in 1 bathroom;
- Order custom blind for the main door;
- A privacy screen;
- Door on the master bedroom; blind on the main door; and
- Seal the bathroom grout.

By July 23 all items had been completed with the exception of the toilet roll installation.

There was no dispute that prior to July 15, 2013 the tenant communicated with the landlord to explain she was having financial problems and could not take possession of the unit on July 15, 2013. There was also no dispute that the landlord replied that the possession date was not a concern but that the tenant would be responsible for paying rent from July 15, 2013 onward.

The landlord said that she sensed the tenant was becoming apprehensive about proceeding with the rental. The tenant was told she could have the keys at any time and on July 17, 2013 the tenant told her that she could proceed financially. The landlord and tenant agreed to meet; the landlord said the meeting took place on July 24th; the tenant said they met on the 23rd.

The parties met at a coffee shop; the tenant had a friend with her. The landlord said that it became clear that the tenant continued to be apprehensive. The tenant made further requests for fixtures; she wanted screens installed on the French doors as the absence of screens would allow her dog to exit the unit. The tenant wanted 4 blinds for the main living room windows. The landlord explained that over time she might be willing to make these expenditures, but that the tenant had agreed to rent the unit in the absence of screens and blinds and that the expense would cause delays should the landlord make these additions to the unit.

The landlord said that the meeting was stressful as the tenant obviously did not want to proceed with the tenancy. The landlord had felt the tenant had become apprehensive and hesitant to proceed and that the tenant was indicating she was not wishing to go forward with the tenancy. There was no dispute that the landlord eventually told the tenant that it did not appear that the tenancy was going to work for the tenant. The landlord felt uncomfortable and disappointed, so she left. At this point the landlord understood the tenant had no intention of moving into the unit and no offer of payment was made by the tenant.

The landlord immediately placed the unit on a popular web site that had initially been used to rent the unit. The landlord was able to locate a new occupant effective September 1, 2013 at the same rent. The landlord has claimed compensation for the loss of July and August 2013 rent.

The tenant sent the landlord a July 29, 2013 letter referencing a "verbal agreement struck" on July 24, 2013 and a request for return of the "damage deposit." The letter included the tenant's forwarding address. Within 1 week of receipt of the letter the landlord submitted an application claiming against the deposit.

The tenant supplied an October 28, 2013 letter stating her position. The tenant outlined her personal circumstances and the steps taken to view and accept the rental unit. When tenant signed the lease agreement at the rental unit on July 4, 2013 she found the unit hot and she was not pleased with the sale and having to show the unit to potential purchasers. While the tenant felt showings would affect her privacy she did sign the agreement. The tenant had been aware the unit was listed for sale.

The tenant confirmed that on July 14th she sent the landlord a text indicating she would not be financially prepared to take the unit until the end of July; the landlord replied that a delayed possession date would be fine but payment must be made from July 15, 2013 onward. The landlord told the tenant the rods and blinds had been ordered and a dry wall installer had been contacted. At this point the tenant discovered that no windows in the unit opened; only 3 patio doors from each room could be opened. The tenant then asked if screens would be placed on the patio doors and the landlord had replied they were not currently prepared to make that expenditure. The tenant was told she could purchase curtains.

The tenant submits she met with the landlord on July 23, 2013, at which point she was prepared to pay \$1,900.00 for the 1st month's rent. The tenant said she had not had possession for the 1st 9 days of the tenancy. When the landlord told the tenant that some items needed to yet be installed the tenant believed the unit would not be ready for occupancy, that she would be disturbed by workmen and future repairs, and not be able to move into the unit. The tenant said the unit had registered thirty-four degrees the previous day, that it had no circulation and no screen doors.

In response to the tenant's concerns the landlord became upset and said that it appeared the situation was not going to work for the tenant. The tenant then asked for

return of the deposit and the landlord told the tenant it would not be returned. The tenant said that the landlord then left the coffee shop, at which point the tenant believed the landlord had terminated the lease. The tenant said she met with the landlord prepared to pay \$1,900.00 and that she was not given a chance to make the payment before the landlord left the coffee shop.

The tenant said she contacted the Residential Tenancy Branch for information on return of the deposit. The tenant stated she was left homeless, without a place to operate her business which left her without any way to generate income. The tenant did not make any enquiry as to how she could obtain possession of the unit as she felt her relationship with the landlord would not be conducive to a successful tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have relied upon the lease agreement which was signed between the parties on July 4, 2013. When there is a dispute in relation to terms of an agreement, reliance on the written contract provides clarity. I have considered the signed lease agreement as a record of the contract between the parties.

There is no dispute that a security deposit in the sum of \$1000.00 was paid on July 4, 2013; the same date the tenant agreed to rent the unit, by signing the lease agreement. The agreement indicated that this was a security deposit payment and based on clause 9 of the agreement I find it was a security deposit.

I find that the tenancy commenced on July 15, 2013; the date indicated in clause 6 of the lease agreement.

Based on clause 7 and 8 of the signed agreement, I find that rent was \$1,900.00 per month, due on the 1st day of each month. Therefore, I find that the tenant was required to pay a pro-rated sum for the period from July 15 to July 31, 2013; the landlord has claimed \$950.00.

Despite what may have occurred during the meeting on July 23, 2013; I find that the tenancy commenced on July 15, 2013. Any delay in occupancy was due to the tenant's choice as she was having financial problems. I find that the landlord was within their right to allow the tenant to delay occupancy, while reminding the tenant she must pay rent from July 15, 2013 onward. I find that the landlord's attempts to be flexible with the tenant in relation to payment that was due on July 15, 2013 did not relieve the tenant of her responsibility and that by July 23, 2013 the tenancy had already commenced.

Section 16 of the Act provides:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit*

While the landlord was upset during the meeting of July 23, 2013, I find that her comments and exit from the meeting did not relieve the tenant of her obligations that had commenced on July 15, 2013. The tenant had delayed occupancy and had not made any effort to provide payment of the rent that was due on July 15, 2013. Based on section 16 of the Act, the tenancy had begun on July 15, 2013 and the tenant's rights and obligations had already commenced.

There was no evidence before me that the unit was not fit for occupancy; the tenant made additional requests for fixtures, but the only agreed-upon repairs remaining were the installation of 2 toilet roll holders.

Therefore, I find that the landlord is entitled to loss of rent revenue from July 15 to July 31, 2013 in the sum of \$950.00.

I then considered the landlord's claim for loss of revenue for the month of August 2013. The landlord became aware effective July 23rd or 24th, 2013 that the tenant was not going to take possession of the unit. The landlord was then required to mitigate the loss they are claiming by making all reasonable efforts to re-rent the unit.

Section 7 of the Act provides:

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.*

The landlord's efforts did result in a new occupant effective September 1, 2013. Given what I find was the late stage in July when the landlord realized the tenant would not take possession of the unit; I find that the landlord did make efforts to locate an occupants and that they are entitled to some compensation for loss of rent revenue. In

relation to mitigation I find it would have been reasonable for the landlord to take more aggressive steps in locating a new occupant, such as use of at least 1 other popular web site and a newspaper. Therefore, in the absence of more aggressive advertising in an attempt to mitigate, I find that the landlord is entitled to compensation in the sum of \$950.00 for loss of August rent revenue to August 15, 2013. The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,000.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance in the sum of \$950.00 (\$950.00 + \$950.00 + \$50.00 - \$1,000.00.) 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.

Conclusion

The landlord is entitled to compensation in the sum of \$1,900.00; the balance of the claim is dismissed.

The landlord is entitled to retain the deposit.

The landlord is entitled to filing fee costs.

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 15, 2013

Residential Tenancy Branch

