



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Park Royal Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing. The tenant's friend attended on his behalf and acted as a translator and witness.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of rental income?

Background and Evidence

The rental unit is an apartment in West Vancouver. The tenant responded to an advertisement in July 2013 and viewed the rental unit as well as other units offered by the landlord. On July 24, 2013 the tenant signed the landlord's form of application for tenancy. On July 26th the tenant signed the landlord's standard form of tenancy agreement whereby he agreed to rent the rental unit for a one year term commencing September 1, 2013 at a monthly rent of \$1,250.00, inclusive of parking, payable on the first of each month. The tenant paid the landlord a security deposit of \$595.00 when he signed the tenancy agreement.

The landlord's agent testified that on August 21, 2013 the tenant attended at the landlord's office and told her that he no longer wanted to rent the unit. The tenant's friend, Mr. P was with him and he assisted the tenant in completing a written Notice to the landlord. The notice was dated August 21, 2013 and said: "I will not be moving Sept 1st 2013 into (address of rental unit). I would like to have my security deposit refunded. Please mail to (address)".

The landlord's agent testified that the landlord secured another tenant to rent the unit commencing September 1st, but the prospective new tenant cancelled the rental agreement within the five period provided by the landlord's form of tenancy application and the prospective tenant thereby forfeited a \$100.00 application processing fee only. The landlord kept trying to re-rent the unit but did not secure another tenant to rent the unit before October 1st.

The tenant submitted that he never moved into the unit and told the landlord that he would not move in. He submitted that because he did not take possession of the unit, he never became a tenant and should receive a refund of his security deposit. The tenant also said that: "I discovered I couldn't move in because of a serious religious problem." The tenant never described the nature of the supposed "religious problem".

The tenant's friend, Mr. P. testified that he phoned the landlord on the tenant's behalf and inquired whether there were any apartments available to rent starting September 1st. He said that he was told that there were none available until October 1st.

The landlord's agent replied to the tenant's evidence; she said that if the tenant's friend was told that no unit was available for September, it was because the prospective tenant who had agreed to take the unit had not yet cancelled when the call was made.

Analysis

The tenant signed a binding tenancy agreement to rent the unit for a one year fixed term. He was not entitled to end the fixed term tenancy by a notice given less than 10 days before the tenancy was to commence. I accept the testimony of the landlord's agent that the landlord immediately took steps to mitigate its losses by attempting to re-rent the unit, but did not succeed in renting it until October 1, 2013. The tenant's argument that he did not become a tenant and is not responsible for September rent because he did not move into the rental unit has no merit.

Conclusion

I find that the landlord is entitled to recover the amount of \$1,250.00, being the rent that should have been paid for September. The landlord is also entitled to recover the \$50.00 filing fee for this application for a total award of \$1,300.00. I order that the landlord retain the security deposit of \$595.00 in partial satisfaction of this award and I

grant the landlord an order under section 67 for the balance of \$705.00. This order may be registered 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: December 11, 2013

Residential Tenancy Branch

