



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

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

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord provided evidence that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail to the forwarding address provided by the tenant on December 18, 2013. The landlord supplied the registered mail receipt showing the tracking number of the registered mail.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her 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 landlord gave evidence that this fixed term tenancy began on May 1, 2013, that the fixed term ended on April 30, 2014, monthly rent was \$1800, and that the tenant paid a security deposit of \$900 on or about March 21, 2013.

The landlord testified that the tenant vacated the rental unit sometime in December 2013. I note that the landlord's application was filed on December 18, 2013.

The landlord's monetary claim listed in their application was \$3175, and in their documentary evidence, the amount claimed had changed to \$3270.79. The monetary claim was comprised of liquidated damages of \$875, suite damage of \$595.79, and loss of rent revenue for \$1800.

The landlord's relevant documentary evidence included the written tenancy agreement, signed and dated March 19, 2013, a written notice to vacate by the tenant to the landlord, dated November 30, 2013, for a move out date of December 31, 2013, email communication between the parties, a condition inspection report, photographs of the rental unit, a cleaning invoice, a painting invoice and receipts, and a carpet invoice.

In support of the landlord's application, and in response to my question, the landlord submitted that as to the condition of the rental unit, the landlord's expectation is that the rental unit will be in "perfect" condition and "impeccably" cleaned, as the rental unit at the beginning of the tenancy is given to the tenant in that condition.

The landlord submitted that the tenant did not leave the rental unit in such condition as their expectation, and therefore the tenant was responsible for cleaning and painting, as there were scuff marks on the wall, possibly made when moving out.

As to the loss of rent revenue for January 2014, the landlord submitted that although the tenant's notice to vacate was dated November 30, the notice was not delivered until December 3, 2013.

The landlord, in response to my question, stated that the landlord started advertising the rental unit shortly after Christmas. The landlord explained that they were not sure if the tenant intended on moving when he wrote that he would, as the small issue he complained of could be resolved.

The landlord later submitted that the landlord advertised the rental unit right away.

The landlord submitted that because the tenant vacated prior to the end of the fixed term, the landlord was entitled to liquidated damages of \$875, as per that term in the written tenancy agreement, and loss of rent revenue for January 2014.

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.

Liquidated damages-

I find the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of \$875 in the event the tenant gave notice to terminate the tenancy agreement and vacated prior to the end of the fixed term. I find this term is intended to offset costs associated with procuring a new tenant. I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenant responsible for paying the liquidated damages fee of \$875 and that the landlord has established a monetary claim in that amount. I grant the landlord a monetary award of \$875.

Loss of rent revenue-

As to the issue of loss of rent for January 2014, 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 he 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, April 30, 2014, subject to the landlord's requirement that they take reasonable measures to minimize their loss as required by section 7(2) of the Act.

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 in order to find a new tenant for January, and I was therefore unable to examine the form, content and frequency of the advertisements. I was further persuaded by the landlord's inconsistent testimony, at first stating that the landlord advertised the rental unit sometime after Christmas, which would be more than 3 weeks later, and then stating that the rental unit was advertised immediately.

I therefore find the landlord submitted insufficient evidence that they have complied with section 7(2) of the Act, step 4 of their burden of proof, and I dismiss their monetary claim for loss of rent revenue for January 2014, in the amount of \$1800.

Suite damage-

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I examined the photographs of the rental unit at the end of the tenancy supplied by the landlord and found that the rental unit was at least reasonably clean, and I did not see any damage which would be classified more than reasonable wear and tear.

In the case before me, the landlord's standard of a vacating tenant, that the rental unit be in perfect condition and impeccably clean, in other words, move-in ready for the next tenant, is much greater than required under the Act.

I find that the evidence supports that the tenant met his obligation under section 37 of the Act, and I therefore dismiss the landlord's claim for suite damage of \$595.79.

As the landlord has had a measure of success with their application, I award them recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$925, comprised of the liquidated damages of \$875 and the filing fee of \$50.

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 \$900 in partial satisfaction of their monetary award of \$925 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 \$25, 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: March 31, 2014

Residential Tenancy Branch

