



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a Monetary Order for losses in respect to an unfulfilled fixed term lease, and losses of revenue.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to the claims and to make relevant prior submissions of evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord submitted 3 pages of late evidence to this matter in support of a downward monetary amendment to their claim. The tenant testified they did not send any evidence to this matter. None the less, the parties agreed that they were each in possession of some e-mail correspondence between them to which each testified as to the evidentiary weight of the e-mail information.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The hearing did not have benefit of the tenancy agreement of this matter. None the less the parties agreed that this tenancy began as a fixed term tenancy commencing September 10, 2013 and was to end June 30, 2014. The monthly rent of \$1100.00 was due on the first day of the month. The landlord collected, and retains in trust, a security deposit in the amount of \$550.00.

The parties agree the tenant moved out of the rental unit on January 31, 2014 following provision of an e-mail to the landlord dated January 13, 2014 they would be vacating at

month's end. The parties testified during the hearing that subsequent to the original agreement between them they agreed that the tenant could end the tenancy earlier than the term of the lease if they provided a continuing tenant agreeable to the landlord to the end of the lease. The tenant testified they had such a tenant available, while the landlord argued they were not presented or provided particulars of any such prospective tenant for them to determine if agreeable. The parties argued extensively about their respective good faith actions toward a continuing tenant. The landlord testified they posted an advertisement for a new tenant at Kwantlen College for which they seek \$10.00; also, paid the rental building caretaker a total of \$60.00 for showing of the rental unit; and, paid the building strata corporation \$100.00 as a move-in fee for new tenants. The landlord also seeks \$80.00 for their cost to show the rental unit. The landlord provided evidence that they eventually re-rented the rental unit for March 01, 2014 for \$1000.00 per month. The landlord seeks the difference in rent for the remaining 4 months of the fixed term lease in the calculation of \$100.00 per month x 4 months.

Analysis

The burden of proof in this matter rests with the applicant landlord. I find that the parties may well have agreed that losses of revenue could be curtailed upon certain conditions if the tenancy were to end earlier than originally agreed. However, I find that neither party provided sufficiently credible evidence to establish they followed through on their part respecting this agreement. Regardless, the Act states that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term, and that any claim by the landlord is subject to their statutory duty pursuant to section 7(2) to do whatever is reasonable to minimize any claimed loss. I accept that the landlord took reasonable steps to minimize the loss in this situation, evidenced by them finding a new tenant for March 2014. On balance of probabilities, I accept the landlord suffered a loss of revenue for February 2014 as a result of the tenant's short notice they were ending the lease – depriving the landlord sufficient time to mitigate losses of revenue for February 2014. As a result, I grant the landlord loss of rent revenue for February 2014 in the amount of **\$1 100.00**.

I find the landlord has not provided evidence to support they did what was reasonable to mitigate their claim that they could not re-rent the unit at the same rent as the original agreement and suffering a loss of \$100.00 for each of the remaining months of the lease. I further find the landlord has not provided evidence to support they posted an advertisement at Kwantlen College for which they claim \$10.00. I further find the landlord has not provided evidence to support they paid someone else \$60.00 to show the rental unit, nor that they were required to pay a move in fee of \$100.00 to a strata corporation. As a result, **I dismiss** the landlord's claims respecting those 4 items.

However, I accept the landlord's claim that they ultimately found a new tenant and that the claimed amount of **\$80.00** for their cost to re-rent the suite due to the tenant's breach is a reasonable non-extravagant cost, and as a result I grant the landlord this amount.

I find that the landlord has established a total monetary claim in the sum of \$1 180.00 and is further entitled to recover their filing fee of \$50.00. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Loss of revenue for February 2014	\$1100.00
Re-renting costs	\$80.00
Filing fee for the cost of this application	\$50.00
<i>Less Security Deposit</i>	<i>-\$550.00</i>
Total Monetary Award to landlord	\$680.00

Conclusion

I Order that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$680.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 04, 2014

Residential Tenancy Branch

