



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hugh & McKinnon Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent and for recovery of the filing fee.

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

The landlord stated that the tenant was served with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on December 20, 2013. The landlord provided the tracking number for the registered mail verbally at the hearing.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing and the landlord's application 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 his 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 a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

The landlord supplied a copy of the written tenancy agreement showing that this tenancy began on December 3, 2013, for a fixed term ending on December 31, 2013, for a monthly rent of \$1050.

The landlord submitted that the tenant paid a security deposit of \$525, and that they have returned the amount of \$435 to the tenant.

The landlord's monetary claim is in the amount of \$508.06, which they claim is for loss of rent revenue for the first half of December 2013, due to the tenant vacating the rental unit prior to the end of the fixed term.

The landlord submitted that the tenant vacated the rental unit in late November, after having received the tenant's notice that she was intending to vacate the rental unit at that time. The landlord submitted that when they received the tenant's notice, the rental unit was advertised immediately, beginning on November 1, 2013, and were not able to secure a subsequent tenant until December 16, 2013.

Due to the tenant leaving the rental unit prior to the end of the fixed term, December 31, 2013, the landlord claims loss of prorated rent revenue for December 1-15.

The landlord's additional relevant additional documentary evidence included email communication between the landlord and tenant, in which the tenant expressed her belief that the fixed term was through November 30, 2013, as this period would be for almost exactly 12 months.

Analysis

Under section 45(2) of the Act, a 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 this case, the written tenancy agreement shows the fixed term ending on December 31, 2013.

In the case before me, I accept that the tenant provided insufficient notice that they were 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, December 31, 2013, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

Although the landlord did not produce copies of their advertisements, as the tenant failed to attend the hearing, I find the landlord provided undisputed testimony that the tenant ended the tenancy prior to the end of the fixed term and that the landlord took reasonable measures to minimize their loss by advertising the rental unit immediately.

I therefore find the landlord submitted sufficient evidence that due to the tenant's breach of the tenancy agreement, the landlord is entitled to recover their loss of rent revenue for December 1-15. I calculate this amount to be \$517.80 ($\$1050 \times 12 \text{ months} = \$12,600 \text{ yearly rate} \div 365 \text{ days per year} = \$34.52 \text{ daily rate} \times 15 \text{ days} = \517.80); however, as the landlord has arrived at a different calculation, lower than my calculation, I grant the landlord's request for \$508.06.

I also grant the landlord recovery of their filing fee of \$50 and therefore find the landlord is entitled to a total monetary award of \$558.06.

Conclusion

The landlord's application for monetary compensation is granted.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$558.06, 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 may be 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: April 15, 2014

Residential Tenancy Branch

