



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 damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 11, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant by registered mail. The landlord used the address provided by the tenants in an email sent to the landlord on January 4, 2014. A Canada Post tracking number and receipt was provided as evidence of service to each tenant. The registered mail for each tenant was returned as unclaimed.

The landlord served the evidence package to each tenant, at the same address, via registered mail sent April 11, 2014. The landlord checked the Canada Post web site and that mail remains at the postal office awaiting pick-up by each tenant.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the *Act*; however neither tenant attended the hearing.

Preliminary Matters

At the start of the hearing the landlord reduced the claim from \$15,500.00 to \$12,297.90.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act?

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

Is the landlord entitled to recover the \$100.00 filing fee cost?

Background and Evidence

On July 1, 2014 the male tenant and the landlord signed the tenancy agreement; the name of both tenants was indicated on the agreement. This was a fixed-term tenancy that commenced on July 1, 2013 for a term ending June 30, 2014. Rent was \$3,800.00 per month, due on the 1st day of each month. A security deposit in the sum of \$1,900.00 was paid.

The landlord has made the following claim:

Loss of January and February 2014 rent revenue	\$7,600.00
Loss of rent revenue March 2014	2,045.09
Loss of rent revenue shortfall April to June 2014 (\$600.00 per month)	1,800.00
Advertising service/cost	250.00
Gas January 1 – March 14, 2014	448.24
Hydro January 1, - March 14, 2014	54.57
TOTAL	\$12,197.90

On November 30, 2013 the tenants emailed the landlord a letter indicating they would need to terminate the tenancy sometime between December 27, 2013 and January 1, 2014. On December 1, 2013 the landlord replied indicating the tenants were breaking the fixed-term lease and that it could prove difficult to locate new occupants during the month of December. The landlord indicated he would contact his accommodation service, for assistance in locating new occupants.

On December 3, 2013 the landlord signed an agreement with his tenant placement agency, for a fee of \$250.00. This service fee covered the costs related to locating new occupants. At the same time the landlord placed the home on a popular web site. The home was listed at \$3,800.00 per month. Copies of the placement agreement and web site advertisements were supplied as evidence.

On December 18, 2013 the landlord sent the tenants an update on the search for new occupants. The landlord informed the tenants that the market was slow, that ads were also placed by the landlord and that those who had already viewed the home had not confirmed interest. The landlord indicated he was not in the position to agree to the request ending the tenancy; he offered to work with the tenants and indicated costs for utilities could be incurred after the tenants vacated. The landlord reminded the tenants that they had yet to place a “for rent” sign on the house; as they had said they would. The tenants responded the next day saying they would obtain a sign and that they would keep the hydro account “intact” until new tenants were located.

The tenants vacated the home, with a condition inspection report completed on December 31, 2013. No damage was identified.

The landlord supplied a list of dates that the placement agency and the landlord showed the home to prospective occupants. In January 2014 it appeared that the home was going to be rented but the potential occupants decided to rent another home. By February a decision was made to decrease the rent to \$3,600.00 and several weeks later the advertisements were again changed, reducing rent to \$3,400.00.

The home was showed a total of twenty times; 10 by the landlord and 10 by the placement agency. Copies of emails sent by the placement agency, informing the landlord or showings, were supplied as evidence.

On March 15, 2014 new occupants, located by the placement agency, took possession of the home. A copy of the new tenancy agreement was supplied as evidence. The home was rented for \$3,200.00 per month.

On March 19, 2014 the landlord sent the tenants an email informing them the house had been rented and that he would be willing to discuss a settlement, as the landlord now had figures on the total loss. On March 21, 2014 the tenants offered to settle the matter, without prejudice, by allowing the landlord to retain the security deposit. The tenants indicated that the landlord had failed to mitigate the loss and should have tried to rent the home for a lower amount.

On March 28, 2014 the landlord sent the tenants a letter, setting out the steps he took to rent the home, the costs and loss incurred and a suggested sum to settle the matter.

The landlord's insurer covered the home until the end of January 2014, during which time the landlord was required to be at the home every few days so that the policy would not be voided. After January 30, 2014 the insurance was not in force as the home was vacant.

The landlord kept the home minimally heated and supplied copies of gas bills from January 28, 2014 to March 14, 2014 inclusive, in the sum of \$638.68. The landlord has claimed \$448.24.

Hydro bills from January 1, 2014 to March 14, 2014 totalled \$78.39; the landlord has claimed \$54.57.

The landlord has claimed the cost of the utilities as he would not have incurred this cost if the tenants had not breached the Act by vacating during the fixed term.

The landlord claimed compensation for the loss of rent revenue from April to June, 2014 inclusive. The home was rented for \$3,200.00 per month; a \$600.00 per month loss during the balance of the fixed term 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.

In the absence of evidence to the contrary, I find, on the balance of probabilities, that the landlord's claim has been proven and that the landlord is entitled to compensation.

First, the tenant's ended a fixed-term tenancy agreement in breach of the Act. The tenants were entitled to end the tenancy, only in accordance with section 45 of the Act. There was no breach of a material term of the tenancy by the landlord and the tenants ended the tenancy before the last day of the fixed term. Other than placing a sign on the property, there was no evidence before me that the tenants took any steps to locate a sub-let tenant, or to locate another occupant who would rent the unit.

I have based my decision on the detailed evidence supplied by the landlord, which set out all of the steps the landlord took to locate new tenants. He hired a placement agency at a reasonable cost and he also advertised and showed the unit. The rent was reduced within a reasonable period of time, in an attempt to mitigate a possible loss.

Residential Tenancy Branch policy suggests that a landlord may apply requesting compensation for breach of contract. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached.

I find that the landlord did take immediate steps to mitigate his loss, by advertising the unit on a web site and by hiring a 3rd party to assist. Copies of advertisements and the placement contract supported this testimony. After what I find was a reasonable period of time, the landlord lowered the rent sought and then, again lowered the rent. Once the landlord obtained new occupants he had accepted rent that was \$600.00 less than the amount he would have received under the tenant's contract.

The landlord warned the tenants that they would have to pay utility costs and informed the tenants that locating new occupants at this time of the year could prove difficult. The tenants understood they were terminating their contract and that the landlord expected the tenants to compensate him for potential losses. This was obvious from email communication supplied as evidence. A fixed term tenancy is meant to give both parties assurance that the term will be respected; the nature of the contract places responsibility on the person who breaches the contract.

Therefore, pursuant to section 65 of the Act, I find that the landlord is entitled to compensation for the loss of January, February and March rent revenue, as claimed. This loss would not have occurred if the tenants had not breach the Act.

The landlord has claimed the loss of one-half of March rent; plus the difference in lowered rent obtained. I find this is reasonable and that the landlord is entitled to the sum claimed.

I find that the landlord is entitled to the loss of rent revenue that will occur from March to the end of the fixed term; June 2014, in the sum of \$600.00 for each of April, May and June. This allows the landlord to be put in the same position he would have been if the tenants had not breached the fixed term tenancy agreement.

I find that the landlord incurred very reasonable costs by hiring a placement agency who ultimately located the new occupant. This allowed the landlord to more effectively mitigate the loss he has claimed.

If the tenants had not vacated the unit the landlord would not have had to pay the utility costs. I find that the costs claimed were reasonable and unavoidable. The landlord could not obtain home insurance from the end of January onward, as the unit was vacant. It would not have been reasonable to leave the home unheated and serviced by electricity. The landlord kept the unit minimally heated and used hydro for only essential needs. I find those costs are reasonable.

All costs were verified by invoices and documents.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Loss of January and February 2014 rent revenue	\$7,600.00	\$7,600.00
Loss of rent revenue March 2014	2,045.09	2,045.09
Loss of rent revenue shortfall April to June 2014 (\$600.00 per month)	1,800.00	1,800.00
Advertising service/cost	250.00	250.00
Gas January 1 – March 14, 2014	448.24	448.24
Hydro January 1, - March 14, 2014	54.57	54.57
TOTAL	\$12,197.90	\$12,197.90

I find that the landlord's application has merit, and that the landlord is entitled to recover the \$100.00 filing fee from the tenants 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 \$1,900.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$10,397.90. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 as claimed.

The landlord may retain the security 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: April 28, 2014

Residential Tenancy Branch

