



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit in partial satisfaction of the monetary award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. The tenant acknowledged that she received the landlord's application for dispute resolution, the Notice of Hearing and the landlord's documents and photographs. She complained that the landlord had served documents to her at a private address that was not disclosed to the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a suite in the landlord's house in Vancouver. The tenancy began on September 1, 2013 for a one year term with rent in the amount of \$1,250.00 payable on the first of each month. The tenant paid a security deposit of \$625.00 on September 3, 2013.

The landlord claimed that the tenant requested to end the fixed term tenancy without providing proper Notice. She said that the tenant gave notice on December 6, 2013 that she intended to move out before the end of December. The landlord filed her application for dispute resolution on December 18, 2013, but after the tenant moved out she filed an amended application on March 31, 2014. In the initial application the landlord claimed payment of the sum of \$1,350.00. In the amended application the landlord claimed payment of \$4,330.00. At the hearing the landlord testified that she has been unsuccessful in re-renting the unit since the tenant moved out. She said that it is still vacant. The landlord testified that the rental unit is in the university district and it is usually rented to students. She said that because it became vacant in the middle of the school term she has so far been unable to find a new tenant to rent the unit. The

landlord submitted a copy of an ad placed on the Craigslist internet site offering the unit for rent at a reduced rent of \$1,000.00. She said she has been advertising it since the tenant gave notice, but she did not provide copies of any advertising save for the ad placed in March.

The landlord testified that the tenant left the rental unit in bad shape; it was dirty and damaged. The landlord submitted photos showing the unclean condition. The unit with rented with furnishing as well as dishes, pots and pans. The landlord said that the tenant left an unattended pot on the stove and burned it up. She said that it took a long time to air out the smell in the rental unit from the burnt pot. The landlord did not provide a statement of her monetary claim. She said at the hearing that she was claiming rent for three months for January, February and March. She said that she was claiming \$500.00 for the cost of cleaning the rental unit, \$5.00 for a pot destroyed by the tenant and \$75.00 for a heater that she loaned to the tenant and broken by the tenant.

The landlord said that the sum of \$500.00 was for her time spent cleaning the rental unit. She said that she spent at least 12 hours cleaning the unit and she referred to the photographs as evidence of the need for extensive cleaning.

The tenant testified that she was uncomfortable living in the rental unit. She said that some of the landlord's relatives lived nearby and came to the rental unit to speak to her. She said that she was disturbed by these visits. She said she was warned about the tenant's son by a neighbour who told her he was suffering from a mental disability. The tenant said she met with the landlord on December 6th and the landlord agreed to end the tenancy early, but then refused to sign any written document to acknowledge the agreement. She claimed that she was afraid of the landlord's son because, based on remarks that the landlord made, she was concerned that he might enter the rental unit without permission. The tenant said that she left the rental unit in the same condition as she found it. She acknowledged that she damaged a pot, but she said that the heater that the landlord claimed she had broken was defective and not damaged by the tenant.

The landlord disputed the tenant's allegations about contacts with her relatives and her son. She said that her son was a young man attending university and suggested that the tenant's concerns about her son were a product of her own psychological problems.

Analysis

Based on the landlord's testimony and the photographs of the rental unit, I accept that the tenant did not leave the rental unit acceptably clean when the tenancy ended. The landlord did not hire a cleaner and did not submit any invoices for cleaning costs. She said that she spent 12 hours cleaning and claimed \$500.00 for her time spent cleaning. I do not allow the amount claimed. The photographic evidence does not show the need

for such extensive cleaning and, based on the time said to have been spent cleaning, the amount claimed works out to an extravagant hourly rate. I find that the sum of \$150.00 constitutes an appropriate award for cleaning, based on the evidence provided. I allow the claim for a replacement pot in the amount of \$5.00. I do not allow the landlord's claim for a damaged heater. The landlord did not submit any evidence to show the heater, the claimed damage, or the cost to replace it. The tenant said the heater was defective and the landlord has not proved this claim on a balance of probabilities.

The tenant claimed that the landlord agreed to end the fixed term tenancy, but then refused to sign a written document to confirm that agreement. The landlord denied making any such agreement and when she received an e-mail message from the tenant referring to an agreement she replied disputing that she had agreed to end the tenancy early.

The tenant contended that an oral agreement was made, altering the terms of the written tenancy agreement so as to end the tenancy sooner than August 31, 2014, which was the stated end of the fixed term tenancy. I do not accept the tenant's testimony that the terms of the tenancy were altered by verbal agreement because such a finding would be contrary to the provisions of the parole evidence rule. The following is a concise statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil. Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that the tenancy is for a one year term to end

on August 31, 2014. I therefore do not accept the tenant's evidence of an oral agreement, particularly when the landlord denied that such an agreement was made.

The landlord has claimed loss of revenue for three months. The tenant breached the fixed term tenancy by ending the agreement before the end of the term, but the tenant's breach does not automatically entitle the landlord to the damages claimed; the landlord still has a duty to mitigate her damages, by making all reasonable efforts to advertise the unit and secure a new tenant. Apart from an undated copy of a Craigslist internet ad, the landlord did not submit any evidence of steps she has taken to advertise the rental unit and secure a new tenant. The landlord suggested that it was unlikely that the unit would be rented because it was vacated during the middle of the university term and other student would not be seeking accommodation until prior to the beginning of a new school term. I do not accept the landlord's evidence as showing that she has taken all reasonable steps to mitigate her loss by seeking out a new tenant. I accept that due to the tenants late notice improperly ending the fixed term tenancy part way through December, and due to the need for some cleaning that may have delayed the showing of the suite, the landlord should be awarded loss of revenue for January. In the absence of more evidence to the steps taken to secure a new tenant, I do not allow the claim for loss of rental income after January and the landlord's claim for loss of revenue for any period after January 31, 2014 is dismissed without leave to reapply.

Conclusion

The total award to the landlord is the sum of \$1,405.00, consisting of \$1,250.00 for January rent, cleaning charges of \$150.00 and \$5.00 for a destroyed pot. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$1,455.00. I order that the landlord retain the security deposit of \$625.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$830.00. 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: April 16, 2014

Residential Tenancy Branch

