



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; a monetary Order for unpaid rent; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Tenant's surname, as it was provided at the hearing.

The Landlord stated that on February 10, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent, via courier, to the Tenant. The Tenant acknowledged receipt of these documents.

On February 25, 2014 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. The Landlord stated that he mailed copies of these documents to the Tenant on February 25, 2014. The Tenant stated that she received these documents and they were accepted as evidence for these proceedings.

On February 25, 2014 the Landlord also submitted a copy of the tenancy agreement to the Residential Tenancy Branch. The Landlord stated that he did not serve this agreement to the Tenant. The Tenant stated that she received the tenancy agreement with the other documents mailed by the Landlord on February 25, 2014 and it was therefore were accepted as evidence for these proceedings.

On May 14, 2014 the Landlord submitted 10 pages of evidence to the Residential Tenancy Branch. The Landlord stated that he provided copies of these documents to the Tenant on May 14, 2014, via email. The Tenant stated that she received these documents and they were accepted as evidence for these proceedings.

On April 30, 2014 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch. The Tenant stated that she provided copies of these documents to the

Landlord, via email, although she cannot recall the date of service. The Landlord stated that he received these documents and they were accepted as evidence for these proceedings.

On May 12, 2014 the Tenant submitted 54 pages of evidence to the Residential Tenancy Branch. The Tenant stated that she provided copies of these documents to the Landlord, via email, on May 13, 2014. The Landlord stated that he received these documents and they were accepted as evidence for these proceedings.

The Landlord and the Tenant both stated that no other documentary evidence was served in regards to this matter.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/lost revenue and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a fixed term tenancy agreement, the fixed term of which began on April 01, 2013 and ended on March 31, 2014. The parties agree that the agreement required the Tenant to pay monthly rent of \$1,582.95 by the first day of each month, which included utilities. The parties agree that the Tenant paid a security deposit of \$762.50 and a pet damage deposit of \$762.50.

The Landlord and the Tenant agree that the rental unit was vacated on January 29, 2014 and that the Tenant provided the Landlord with a forwarding address on that date, via email. The Landlord is seeking compensation for lost revenue for February and for the period between March 01, 2014 and March 14, 2014.

The Landlord and the Tenant agree that in October of 2013 the Tenant informed the Landlord that she would like to end the tenancy before the end of the fixed term. The parties agree that the Tenant offered to help the Landlord find a new Tenant. The Landlord and the Tenant agree that the Tenant did advertise the rental unit and that the rental unit was advertised for monthly rent of \$1,685.00 per month, without utilities, at the direction of the Landlord.

The Tenant stated that several people responded to her advertisement and that one of those people indicated he would like to rent the unit for \$1,300.00. The Landlord stated that he could not agree to rent the unit for only \$1,300.00, as this would result in a significant loss of revenue over the period of one year.

The Tenant stated that she vacated the rental unit after she and the Landlord were unsuccessful in finding a new tenant, as she simply could not afford to pay the rent for any longer.

The Landlord stated that he also posted an advertisement on a popular website on October 31, 2013, in which he indicated the rent would be \$1,685.00. The Landlord stated that he knew the Tenant was updating her advertisement on a regular basis so he did not update his advertisement until February 01, 2014, after the Tenant vacated the rental unit. The Landlord stated that on February 15, 2014 he found a new tenant, effective March 15, 2014, who agreed to pay monthly rent of \$1,650.00.

The Landlord stated that when he advertised the rental unit on February 01, 2014 he indicated it was available for rent on March 01, 2014. He stated that cleaning was required in the rental unit and he needed to make repairs and he believed the rental unit would not be ready for occupancy until March 01, 2014.

The Tenant agrees some cleaning was needed in the rental unit but at the end of the tenancy they Landlord agreed that the unit was adequately cleaned, because the rental unit was not particularly clean at the start of the tenancy. She stated that a significant amount of cleaning was not required.

The Landlord and the Tenant agree that a condition inspection report was completed by the Tenant at the end of the tenancy and that it was signed by the Landlord and the Tenant. This report, which was submitted in evidence, shows the rental unit was clean and undamaged at the end of the tenancy, with the exception of damage caused by animal(s). The Landlord said that he did not thoroughly inspect the rental unit before he signed this report.

The Landlord stated that his decision to delay a new tenancy until March 01, 2014 was also related to the need to repair floors in the rental unit that had been damaged by water. The Tenant agreed that the floors needed to be repaired as a result of the dishwasher leaking.

Analysis

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 45 of the *Residential Tenancy Act (Act)* when she ended this tenancy on January 31, 2014, which is two months earlier than the end of the fixed term of the tenancy agreement.

A landlord may be entitled to compensation for lost revenue if the lost revenue was the direct result of a tenant providing improper notice to end a tenancy and the Landlord takes reasonable steps to mitigate the lost revenue by advertising the rental unit in a reasonable and timely manner.

On the basis of the undisputed evidence, I find that the rental unit was being regularly advertised on a popular website since October 31, 2013, by the Landlord and/or the Tenant. I find, however, that the Landlord's decision to ask for \$1,685.00 in rent (without utilities), rather than the \$1,582.95 (with utilities) that the Tenant was paying, likely contributed to the Landlord's inability to locate a new tenant prior to March 15, 2014.

In my view, it was unreasonable for the Landlord to delay entering into a tenancy agreement with a third party in an attempt to find a tenant willing to pay increased rent. I find that the Landlord should have advertised the rental unit for the same rent the Tenant was paying (including utilities) or for the same rent plus the allowable rent increase for 2014, which is 2.2%. I find that the Landlord failed to mitigate his losses, as he is required to do pursuant to section 7(2) of the *Act*, when he attempted to rent the unit for an increased amount of rent.

I find that the Landlord also failed to mitigate his losses when he indicated in his advertisement of February 01, 2014, that the rental unit was not available until March 01, 2014. There can be no doubt that this information directly contributed to the loss of revenue for the month of February.

In the Application for Dispute Resolution the Landlord, which was filed on February 05, 2014, the Landlord declared that he was seeking compensation because the Tenant had prematurely ended a fixed term tenancy. The Landlord makes no reference to damage to the rental unit anywhere in the Application for Dispute Resolution or in any evidence submitted by the Landlord. I therefore find it entirely unfair for the Landlord to raise this issue at the hearing in support of his claim for lost revenue.

A landlord has the right to claim compensation for lost revenue if a tenant fails to comply with their obligation to clean the rental unit and repair damage caused by the tenant, and the condition of the rental unit prevents a landlord from entering into a new tenancy. A landlord has an obligation to inform a tenant if he is seeking compensation for this reason. As the Landlord has not sought compensation for lost revenue as a result of damage to the rental unit, I will not consider whether he is entitled to lost revenue arising from his alleged need to clean/repair the rental unit.

In reaching this conclusion I was influenced, to some degree, by the condition inspection report that was submitted in evidence, which indicates that the rental unit was left in good condition at the end of the tenancy. On the basis of this report and in the absence of any prior notice that the Landlord was unable to rent the unit as a result of damage, I find that there can be no reasonable expectation that the Tenant knew the Landlord's claim for lost revenue related to the condition of the rental unit.

I find that the Landlord did not take reasonable steps to mitigate his lost revenue after the Tenant provided improper notice to end the tenancy and I dismiss the Landlord's claim for lost revenue/unpaid rent.

In considering this matter I have placed little weight on the submission that the Landlord could have rented the unit to an interested party for \$1,300.00 per month. I find that this is significantly lower than the rent being paid by the Tenant and, over the course of one year, represents a loss of revenue of over \$3,395.00. I find that it would be unreasonable to require the Landlord to enter into a tenancy agreement for such a reduced rate.

I find that the Landlord's application has been without merit and I dismiss the claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish a monetary claim, I find that he must return the Tenant's pet damage deposit and security deposit of \$1,525.00. Based on these determinations I grant the Tenant a monetary Order for \$1,525.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: May 22, 2014

Residential Tenancy Branch

