



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of Revenue caused by the tenant's termination of the tenancy prior to end of the fixed term.

At the outset of the hearing, the landlord advised that the tenant vacated the unit on January 31, 2014.

Therefore the portion of the landlord's application indicating that the landlord was seeking an Order of Possession based on Breach of a Material term is now moot.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of revenue?

Background and Evidence

The landlord testified that the one-year fixed term tenancy began on June 1, 2013 and the rent was \$1,125.00. A \$562.50 security deposit was paid at the start of the tenancy.

Submitted into evidence was a copy of the tenant's Notice to End Tenancy, a copy of the fixed-term tenancy agreement, copies of the move-in and move-out condition inspection reports and copies of communications.

The landlord testified that on the tenant gave one month written notice to move effective January 31, 2014 and this was in violation of the terms of the fixed term tenancy which was not set to end until June 30, 2014.

The landlord testified that they immediately tried to find another tenant but didn't succeed in renting the unit for February 2014, losing \$1,125.00 in rent as a result..

The landlord acknowledged that the tenant provided his written forwarding address on February 24, 2014. Residential Tenancy Branch records confirm that the landlord made an application for compensation for the loss of rent on March 10, 2014. The landlord is seeking to keep the tenant's \$562.50 security deposit and a monetary order for the remainder of the loss.

The tenant acknowledged ending the tenancy before the expiry date shown on the tenancy agreement. The tenant testified that when they gave their Notice to vacate, the landlord gave no indication that the tenant would be held liable for any losses. In fact, according to the tenant, the landlord implied consent to the tenancy being terminated early, as evidenced by the landlord's failure to object to the termination and the fact that the landlord immediately began to show and market the unit to potential renters. The tenant testified that, had he been advised that the landlord would be seeking compensation, he would have stayed in the unit instead of moving out.

The landlord testified that there was no implied or overt consent to the tenant's early ending of the tenancy. The landlord pointed out that, she sent a letter to the tenant dated February 3, 2014 stating that there was no mutual consent by the landlord to ending the tenancy before the end date of June 30, 2014.

Analysis

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Based on the evidence, I find that the landlord and tenant entered into a fixed term tenancy that was to expire on June 30, 2014. I find that the tenant unilaterally terminated this tenancy with one month notice, effective January 31 2014, and this was in violation of the agreement. I further find that, due to the tenant's contravention of the tenancy term, the landlord incurred a monetary loss of \$1,125.00 for unpaid rent for February 2014. Finally, I find that the landlord had made a reasonable attempt to mitigate the loss and was successful in finding a new renter for March 1, 2014.

Given the above, I find the landlord's monetary claim satisfies all elements of the test for damages and the landlord is entitled to \$1,175.00 comprised of \$1,125.00 rent for February 2014 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the tenant's security deposit of \$562.50 in partial satisfaction of the claim leaving a balance due of \$612.50.

I hereby grant the Landlord an order under section 67 for \$612.50. This order must be served on the Respondent and may be filed in B.C. Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted a monetary order for loss of revenue for one month.

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: June 26, 2014

Residential Tenancy Branch

