Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, OPR, OLC, DRI, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution made on May 7, 2014, in which the tenant has applied to cancel a Notice ending tenancy for unpaid rent, compensation for damage or loss under the Act, to dispute an additional rent increase, an Order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied on May 30, 2014 requesting compensation for unpaid rent, and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The parties agreed that the tenancy has ended; the tenant withdrew the request to cancel the Notice to end tenancy.

The landlord confirmed receipt of the tenant's hearing package; given on approximately May 8, 2014.

On June 19, 2014 the tenant amended her application, increasing the monetary sum claimed. The amended application was given to the landlord on June 19, 2014; by posting to the door. The amended application is deemed, in accordance with section 90 of the Act, served on the 3rd day after posting. Therefore, as the amended application is deemed served to the landlord effective June 22, 2014, I determined that the amended application was not served to the landlord at least 5 days prior to the hearing; as required by the Residential Tenancy Branch (RTB) Rules of Procedure. Therefore the amendment was set aside.

The landlord confirmed receipt of the tenant's evidence package, personally delivered on June 18, 2014. The landlord was able to listen to the tenant's audio evidence supplied on that date.

The landlord's application reflected a claim for unpaid May 2014 rent and loss of June 2014 rent revenue.

An environmental report submitted by the tenant to the RTB was not given to the landlord; that report was set aside. Parties must provide each other and the RTB with identical evidence submissions they wish to rely on during the hearing.

The tenant's application did not include a detailed calculation of the claim made; outside of a notation that rent had been increased from $800.00 to $850.00 and that the tenant was disputing this increase. The tenant's agent said that the rent increase portion of the claim was $140.00 for rent overpaid during a 7 month period of time. The balance of the monetary claim; requested represented loss as a result of the landlord's attempts to circumvent the legislation. The tenant's submissions led me to establish that this portion of the claim was made as a penalty, a term used by the agent when explaining the claim.

In the absence of a detailed calculation setting out the sum claimed and grounds in accordance with the Act, the portion of the claim requesting compensation for the Landlord's attempt to circumvent the Act was dismissed. The Act does not contemplate compensation as a form of imposing a penalty.

The tenant confirmed receipt of the landlord's hearing package, personally delivered on May 30, 2014.

The landlord was unable to serve the tenant with evidence as he did not have a forwarding address for the tenant. When the tenant served the landlord with her application the service address was the rental unit. The tenant then vacated and the landlord believed service to the rental address would not be sufficient.

On June 16, 2014 the landlord amended the application and submitted that application and evidence to the RTB. The amended application was given to the tenant's agent on June 19, 2014. The landlord increased the sum claimed from $1,375.00 to $2,262.59. The amended claim was meant to reflect costs for cleaning, dumping fees and cleaning supplies. No detailed calculation of that claim or evidence verifying the claim was given to the tenant.

In the absence of a detailed calculation of the portion of the claim included on the landlord's amended application I determined, in accordance with section 62(3) and 59 of the Act, that the claim for damage or loss in the additional sum of $887.59 was dismissed.

The parties were at liberty to provide oral testimony in relation to any excluded evidence.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of $1,375.00 for unpaid May and June 2014 rent?

Is the tenant entitled to compensation as the result of a rent increase made that was not in compliance with the Act?

Background and Evidence

The tenancy commenced in September 2009; rent was $800.00 per month, due on the 1st day of each month. A security deposit in the sum of $400.00 was paid.

The tenant gave the landlord notice on May 20, 2014 that she would vacate the unit on June 1, 2014. The parties agreed that the tenant vacated on June 5, 2014.

In May 2014 the tenant paid $325.00 of rent owed. The tenant said she reduced the rent payment as the result of mold in the rental unit and the cost of a report the tenant had completed to assess the mold. The tenant confirmed that she did not have an Order allowing rent reductions.

The landlord submitted that he completed repairs on the upper level unit and, as a result the tenant had an "airborne mold test" completed and deducted the cost from rent without his consent. The tenant also refused to cooperate with showings of the unit.

There was agreement that in August 2013 the landlord issued a Notice of Rent Increase in the approved form. The landlord increased the rent effective December 1, 2013, from $800.00 to $850.00. During the hearing the landlord confirmed that he now understands the allowable percentage increase was 3.8%. This would have allowed an increase in the sum of $30.40.

The landlord has claimed unpaid rent in the sum of $525.00 and the loss of rent in the sum of $850.00 for June, 2014.

On May 26, 2014 a notice of entry was handed to the tenant's child. The tenant said she could not find the notice and as it was given to the child the landlord could not enter the unit. The landlord issued a 2nd notice of entry on June 3, 2014; the tenant then vacated on June 5, 2014. The landlord read text messages from the tenant, telling the landlord they needed notice of entry but that the landlord must wait until the tenant vacated.

The landlord said he was trying to establish the state of the home and that he was denied that opportunity. The landlord could not attempt to locate new occupants, as cleaning was required and proper notice ending the tenancy had not been given by the tenant.

Once the tenant vacated the landlord immediately advertised the unit for rent but new occupants were not located for June, 2014.

The tenant said she was vacating based on a note given to her, requiring removal of her cats from the unit. The parties agreed that the landlord had issued a hand-written note. The landlord said he was not asking the tenant to vacate; only that she remove her cats. The tenant stated that she accepted the note as cause to vacate the unit, on the landlord's demand.

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.

A landlord may issue a notice of rent increase, in accordance with Part 3 of the Act. Notice must be in the approved form and calculated in accordance with the Residential tenancy Regulations.

Section 22 of the Regulation sets out the allowable increase, linked to inflation. The annual allowable increase is then determined and issued by the RTB in September of each year. In 2013 the allowable increase was 3.8%; meaning a maximum increase in the sum of $30.40 for this tenancy. Any increase that exceeds the allowable amount fails to comply with the Act. RTB policy suggests that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected.

Therefore, based on the evidence before me I find that the landlord has imposed a rent increase that did not comply with the legislation, as it exceeded the allowable amount. Therefore, I find that the tenant is entitled to compensation in the sum of $50.00 per month from December 2013 to April 2014, inclusive, in the sum of $250.00.

There was no evidence before me of any Notice issued by the landlord, ending the tenancy. I find, pursuant to section 44(f) of the act that the tenancy ended on June 5, 2014 when the tenant vacated the unit.

Section 45 of the Act requires a tenant to give written notice ending a tenancy, in advance. The notice must be signed, dated and include the effective date. Written notice given on May 20, 2014 issued by the tenant was effective June 30, 2014.

In the absence of proper notice ending the tenancy I find that the tenant's breach of the Act resulted in a loss of rent revenue to the landlord. The tenant vacated at a time when it would have been difficult for the landlord to locate a new occupant for that month. Therefore, I find that the landlord is entitled to compensation in the sum of $800.00 for loss of June 2014 rent revenue.

I find that the tenant made a deduction from May 2014 rent owed, in breach of the Act. Section 26 of the Act requires a tenant to pay rent when it is due. There was no evidence before me of any emergency repair that was required and no evidence supporting the sum the tenant deducted from rent. Therefore, I find that the landlord is entitled to the balance of May 2014 rent owed in the sum of $475.00.

As each application has some merit I find that the filing fee costs are set off against each other.

Therefore, the landlord is entitled to compensation in the sum of $1,275.00; less the sum owed to the tenant, for a balance of $1,025.00.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $400.00**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $625.00**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that entry to a unit to show the unit to prospective tenants and to establish the state of the home are reasonable. When proper notice is given in accordance with section 29 of the Act a landlord cannot be denied access.

Conclusion

The tenant is entitled to compensation in the sum of $250.00 as the result of a rent increase not given in compliance with the legislation.

The landlord is entitled to compensation in the sum of $1,275.00 for unpaid rent and loss of rent revenue.

The landlord may retain the security deposit.

Filing fees are each set off against the other.

The balance of the claims are dismissed.

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 25, 2014

Residential Tenancy Branch