



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rainbow Reach Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This was the hearing of the landlord's application for a monetary award. The hearing was conducted by conference call. The landlord's representative and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of rental income and if so, in what amount?

Background and Evidence

The rental unit is a townhouse in North Vancouver. The landlord advertised the unit for rent. The tenants responded to the landlord's internet advertisement and viewed the rental unit. They completed an application to rent the unit. The landlord's representative testified that she reviewed the tenants' employment particulars and determined that they would be acceptable tenants. She prepared a form of tenancy agreement for a one year term with rent in the amount of \$1,665.00, payable on the first of each month, commencing on May 1, 2014. She sent a copy of the tenancy agreement to the tenants as an e-mail attachment and asked the tenants to sign the agreement and send it back to the landlord. The tenant replied by e-mail that it would not be possible for both herself and her partner to sign the lease immediately. She asked whether she could meet with the landlord on the following Monday and provide cheques as well as the signed lease. The landlord responded that:

Without a signed lease, it is not official and therefore, I will have to look at the other tenants as more serious tenants. It is unfortunate, but that is the rule of contract law. The other applicants are waiting for an answer and if I can't get the lease signed by you, I don't really have anything official.

It's up to you. If you are not sure, just let me know.

The tenant replied on April 2nd; she said in a text message:

I completely understand! I am just heading home from work and will trying to coordinate with (name of co-tenant) to sign the lease before he flies out.

The only question I have is in regards to the end of the tenancy. We are hoping to do a month to month renewal once the one year lease is up..... is this possible?

From my understanding, the lease ends April 30th and then we can provide 2 months notice to renew the lease, which would be for one full year?

Can you please clarify?

The landlord replied, saying: "Normally after the one year lease it goes on a month to month, which is the case here." The tenant responded as follows:

Ok, should I check the other box off then on the lease? I am just confused as to what the difference is between the two options....

The first one explicitly states that after one year a month to month lease will commence...

The second option states to give two months notice to continue the lease.... But at that point, just to clarify and be certain, we will not have to sign another lease? We will provide two months notice to continue and then it will be a month to month basis with no re signing of a lease?!

Sorry, the first box just seems more applicable and I just want to make sure I fully understand prior to signing!

The landlord response was: "I am in meeting so just sign and when we meet we can go over everything then to make sure."

The tenants signed the lease and sent a signed copy to the landlord. In the e-mail to the landlord sent on April 2, 2014 she said: "Attached is the lease. What time works for you for Monday am to meet to discuss the lease, as well as provide you with cheques?"

After the lease was signed the landlord requested payment of the security and pet deposits. The landlord and the tenant arranged to meet at the rental unit on April 6th to exchange cheques and copies of the lease agreement. Later the tenant proposed to send cheques to the landlord by express post. She said the cheques would be postdated for May 1st for the deposits. The landlord informed the tenants that although rent was due on May 1st, the deposits were due immediately on signing the lease. She asked whether the tenants were able to pay the deposits by the following day or not. The tenant replied and said in part:

It is not my intention to be difficult but the way this has unfolded I would rather not move forward.

Thanks for your time. All the best.

The landlord's representative testified that she placed an advertisement offering the unit for rent a few days after the April 6th e-mails. The landlord found a new tenant who rented the unit commencing July 1, 2014 at a monthly rent of \$1,650.00. The landlord has claimed lost rental income for May and June in the amount of \$3,330.00 plus a rent differential for the remainder of the term in the total amount of \$150.00.

The tenants submitted that the lease agreement was never finalized and it was contingent upon agreement about the renewal clause. The tenants also submitted that the landlord had not completed a credit check and therefore the lease agreement was not binding. The tenants pointed to two circled items in the signed lease agreement. The tenants submitted that the circled items amounted to a "signback" and until they were signed or initialed there was not a binding agreement.

Analysis

The tenants viewed the rental property. They expressed their interest in renting for a one year term at a specified monthly rate, the tenancy to commence on May 1st. The landlord was prepared to accept them as tenants. The landlord's representative prepared a tenancy agreement and forwarded it to the tenants. The tenant raised a question about the renewal term, but signed the agreement and returned a copy to the landlord. After the landlord demanded the immediate delivery of security deposits, the tenant responded, and said that they would rather not proceed with the tenancy. After some further inconclusive communications the tenancy did not proceed. The tenants said at the hearing that they rented other accommodation commencing May 1, 2014.

I find that the tenants agreed to all the essential terms of the fixed term tenancy agreement. The landlord made it plain to the tenants that the signed lease was essential and without it she would look for other tenants. The tenants did not qualify their signatures on the tenancy agreement; they requested some clarification of the renewal provision, but I find that they made a binding commitment to the fixed term lease when they signed and returned the tenancy agreement. If the tenants regarded clarification of the renewal clause as an essential to the formation of a contract, they should have refrained from signing until it was resolved to their satisfaction, but instead they signed and indicated their intention to be bound, going on to inquire about delivery of keys and possible early access to the rental unit.

I find that there was a valid and binding tenancy agreement for a one year term as claimed by the landlord and that the tenants breached the agreement by repudiating the tenancy and by failing to perform the agreement. Based on the evidence provided, I find that the landlord acted reasonably in mitigating its damages by seeking out and securing a new tenant to rent the unit effective July 1, 2014.

I find that the landlord is entitled to a monetary award for the loss of rental income for May and June and for a \$15 per month rent differential for the 10 months thereafter for a total award of \$3,480.00

Conclusion

I have granted the landlord an award of \$3,480.00. The landlord is entitled to recover the \$50.00 filing fee for its application, for a total award of \$3,530.00 and I grant the landlord an order under section 67 in the said amount. 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: August 14, 2014

Residential Tenancy Branch

