



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Saanich Peninsula Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The listed parties attended, they were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

Neither party raised any issue regarding service of the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit in satisfaction of their monetary claim and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence from the written tenancy agreement was that this fixed term tenancy began on November 1, 2013, monthly rent payable by the tenant was \$1400, and the tenant paid a security deposit of \$700 at the beginning of the tenancy.

The written tenancy agreement, signed by both parties on November 2, 2013, shows that the tenant was required to vacate at the end of the fixed term, which was March 31, 2014.

The landlord's monetary claim is \$700.

In support of their application, the landlord, who is the landlord's agent employed by the property management company representing the owners, submitted that the tenant vacated the rental unit on February 28, and a move-out inspection was conducted on March 1, 2014.

The landlord submitted that he did not receive any written notice that the tenant intended on vacating prior to the end of the fixed term and only learned that she was moving out at the end of February on February 26, 2014.

The landlord submitted that due to the tenant's breach of the fixed term of the tenancy agreement and insufficient notice by the tenant, the landlord suffered a loss of rent revenue for the last month of the fixed term tenancy, or March 2014.

The landlord submitted that although they would be entitled to claim for the entire monthly rent for March, or \$1400, they were only requesting to be able to retain the tenant's security deposit of \$700 in satisfaction of the loss of rent revenue for March 2014.

The landlord's relevant documentary evidence included the written tenancy agreement, a move-out note regarding an "exit" inspection, and email correspondence between the parties and with the owner of the residential property.

Tenant's rebuttal-

In her documentary and oral evidence, the tenant submitted that she met with the owners and the landlord's agent on October 23, 2014, and that the landlords all agreed that the tenancy could be extended beyond March 31, 2014, perhaps going on a week to week basis.

The tenant explained that she had a prior important commitment near the end of March and would not be able to move out at the end of that month. The tenant submitted that she was in continuous contact with the landlord's agent and that he agreed that something would be work out with the owners for an extension beyond March 31, 2014, in order that the tenant could deal with her prior commitment.

The tenant submitted that the landlord's agent was aware that she was moving out by the end of February as he was made aware that she, the tenant, had this prior commitment and had received no definite response.

The tenant's representative pointed out that the landlord failed to provide a proper move-in or move-out condition inspection report, and thereby lost their rights to the tenant's security deposit.

Landlord's surrebuttal-

The landlord denied ever promising the tenant that she could extend the end of the tenancy date, especially not the month or two beyond that date, as the owners were traveling in their motor home and would need to move back into the rental unit.

Analysis

Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice as required under this section of the Act that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, March 31, 2014, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

As the tenant failed to provide written notice and did not move out of the rental unit until February 28, 2014, I accept that the landlord would not have been able to secure another tenant for the month of March.

Due to the tenant's insufficient notice, I find the landlord is entitled to a monetary award of \$700 for loss of rent revenue as claimed.

I must further note that although the landlord failed to comply with their requirements to perform a move-in and move-out condition inspection as required under the Act, this failure only extinguished their right to claim against the tenant's security deposit for damage to the rental unit; however, the landlord was still entitled to claim for loss of rent revenue or unpaid rent, so long as the claim was made within 15 days of the end of the tenancy or receiving the tenant's written forwarding address, whichever is later.

As the landlord's application was successful, I grant them recovery of their filing fee of \$50.

Conclusion

The landlord's application has been granted.

The landlord is directed to retain the tenant's security deposit of \$700 in satisfaction of their monetary award for loss of rent revenue, as was their request.

I have granted the landlord a monetary order of \$50, representing their filing fee paid for their application. This monetary order is enclosed with the landlord's Decision, must be served upon the tenant, and if necessary, filed in the Smalls Claims Division of the Provincial Court of British Columbia for enforcement.

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: July 22, 2014

Residential Tenancy Branch

