



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, 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 money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

Preliminary procedural matter-

At the beginning of the hearing, the tenant contended that she had not received the landlord's documentary evidence; however, when offered an adjournment of the hearing to receive the landlord's evidence, the tenant declined the offer and request to proceed with the hearing.

The landlord confirmed receiving the tenant's documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further compensation, and recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this one year, fixed term tenancy began January 1, 2013, ended on July 15, 2013, when the tenant vacated the rental unit, monthly rent was \$1325, and the tenant paid a security deposit of \$662.50. The fixed term listed in the written tenancy agreement provided by the landlord showed an ending date of December 31, 2013.

The landlord is a property management company representing the owner of the residential property.

The landlord's monetary claim is \$660 for liquidated damages and loss of rent revenue for the month of August for \$1325. It is noted that the landlord also included in the total of their claim the amount of \$662.50, for the security deposit which they currently retain. The landlord was informed that as they currently hold a security deposit in trust for the tenant, this amount could not form part of their monetary claim.

In support of their application, the landlord submitted that they received an email from the tenant on July 11, 2013, regarding a police matter in the rental unit, which led the tenant to vacate suddenly due to safety reasons as there had been an aggravated assault in the rental unit.

The landlord submitted that after receiving this emailed notice from the tenant, they immediately began advertising the rental unit for an availability for August 1, 2013, and that despite the advertising, they were not able to secure new tenants until September 1, 2013, causing the owner to suffer a loss of rent revenue.

As to the liquidated damages claim, the landlord submitted that the tenant signed her agreement to pay for these liquidated damages in the event she vacated the rental unit prior to the end of the fixed term. The landlord explained that the amount of \$660 listed was the amount her company charged the owner for securing a new tenant.

Tenant's response-

The tenant submitted that she had to vacate the rental unit through no fault of her own due to a brutal assault occurring in the rental unit. The tenant submitted further that she was not allowed to return to the rental unit due to the collection of forensic evidence.

The tenant submitted that she did not believe she should be obligated to pay for the liquidated damages as part of the problem in finding a new tenant was due to the time of year. The tenant additionally questioned whether the landlord advertised immediately, as the cleaning costs receipts showed for late July.

Analysis

The burden of proving a monetary claim rests with the party making the claim, and in this case, the landlord has the burden of proof, which includes finding that the claimant has incurred a loss through the violation of the Act or tenancy agreement by the other party, and that the claimant has taken reasonable measures to minimize their loss.

Loss of rent revenue for August-

Under section 45(2) of the Act, 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 this case, the written tenancy agreement shows the fixed term ending on December 31, 2013.

In the case before me, while I do not find the tenant willingly chose to end the tenancy due to the aggravated assault occurring in the rental unit, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term. Pursuant to the tenancy agreement and the Act, I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, here, December 31, 2013, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

As the landlord was able to have a new tenant in place for September 1, 2013, I accept that the landlord took reasonable measures to minimize their loss by advertising the rental unit immediately.

I therefore find the landlord submitted sufficient evidence that due to the tenant's breach of the fixed term of the tenancy agreement, the landlord is entitled to recover their loss of rent revenue for August 2013, in the amount of \$1325.

Liquidated damages-

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement (clause 5 in this case) must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, the landlord explained that this cost was a fixed cost assessed to the owner for finding a new tenant. In reviewing this clause, I do not find that the amount to be excessive and in this case, the amount appears to be reasonable as to the actual costs incurred. Additionally, even if the tenant felt compelled to leave the rental unit due to an unforeseen aggravated assault, the signed, written tenancy agreement was a binding contract.

I therefore find that the landlord is entitled to liquidated damages of \$660.

I also grant the landlord recovery of their filing fee of \$50 paid for this application.

Due to the above, I grant the landlord a total monetary award of \$2035, comprised of \$1325 for loss of rent revenue for August 2013, liquidated damages of \$660, and the filing fee of \$50.

Conclusion

The landlord's application for monetary compensation has been granted as I have granted them a monetary award of \$2035.

I direct the landlord to retain the tenant's security deposit of \$662.50 in partial satisfaction of their monetary award, and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1372.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant

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 12, 2014

Residential Tenancy Branch

