



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY & INSURANCE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution I note that the Landlord listed the following in the details of the dispute: "The landlord notified the tenant that her tenancy did not end until June 30, 2014 and would still be responsible for rent until the end of the term" and ... "We request a monetary order of \$550.00 and to retain the security deposit".

Based on the aforementioned I find the Landlord made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* as they only selected the box to request to keep the security deposit.

Based on the above, I amend the application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, as it was noted in the details of the dispute, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on June 10, 2014, to obtain a Monetary Order to: keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by two agents for the Landlord and the Tenant. At the beginning of this hearing the Landlord's agent E.E. stated that she was hard of hearing and could not clearly hear what was being said so she wanted to have J.E. conduct the hearing on behalf of the Landlord. Despite my acknowledgement of E.E.'s request, she interrupted me on two additional occasions to say the Landlord had stated their case in their written submission, as clearly as possible, that J.E. would represent the Landlord, and that she would sit and listen to the hearing and would not interrupt again.

Each party gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on July 1, 2013 and was scheduled to end on June 30, 2014. The Tenant was required to pay rent of \$1,100.00 and on July 1, 2013 the Tenant paid \$550.00 as the security deposit. On April 30, 2014 the Tenant served the Landlord notice to end her tenancy early, effective May 31, 2014.

The Landlord submitted evidence to support their claim for loss of June 2014 rent which included, among other things, copies of: the tenancy agreement; the Tenant's notice to end tenancy; the Landlord's written response dated April 30, 2014; and a copy of the internet advertisement listing the unit for rent.

The Landlord testified that despite them informing the Tenant she would be responsible to pay rent for June 2014 the Tenant vacated the unit before the end of her fixed term tenancy. The Landlord submitted that they began advertising the unit once the Tenant vacated the unit and the Landlord pointed to their evidence which included a copy of their internet advertisement that was placed on June 9, 2014. The Landlord submitted that they also had a permanent "for rent" sign at their building which was located on a corner lot. The Landlord argued that they did not re-rent the unit until July 1, 2014; therefore, they are seeking to recover \$1,100.00 in lost rent for June 2014.

The Tenant confirmed she ended her tenancy before the expiration of the fixed term and argued that she could no longer reside in the unit because of the presence of silver fish. In support of her position, the Tenant submitted a three page typed statement in response to the Landlord's claim which also indicated she was ending her tenancy because she had to leave the country to attend to a family matter.

The Tenant argued that she always communicated with another employee at the Landlord's office with regards to her tenancy and that she discussed ending her tenancy with that employee. She stated that that employee called her after she delivered her notice and told her that the Landlord would be making an application to keep her deposit and to recover the filing fee if she did not agree for them to keep her deposit.

The Tenant testified that there had been a "for rent" sign that was posted at the rental unit during her tenancy but argued it was taken down right after she served the Landlord her notice to end tenancy. She said it remained down for the remainder of her tenancy. She submitted that she was very clear to the Landlord's other employee that she would be vacating the unit as of May 31, 2014 and she never wavered. She submitted that she never received a notice of entry from the Landlord to show her unit to prospective tenants.

In closing, the Landlord stated that they cannot commit to a tenancy with a new tenant until the existing tenant actually moves out. He argued that they had experienced a previous situation where another tenant decided to stay living in the unit after giving them notice.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

A party must meet all 4 criteria to be successful in proving a claim for compensation.

Section 45 (3) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the end of the fixed term and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement; regardless of any dispute the tenant may have with their landlord.

It was undisputed that the Tenant gave notice to end her tenancy May 31, 2014, prior to the end of her fixed term, which I find to be a breach of section 45(3) of the Act. The Landlord submits that it was the Tenant's breach which caused them to suffer a loss of rent for June 2014 in the amount of \$1,100.00.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Landlord submitted oral testimony that they had a "For Rent" sign posted outside their building as part of their efforts to find a replacement tenant. The Tenant disputed that testimony and argued that the sign was removed after she gave her notice to end tenancy. The Landlord did not address this argument in his rebuttal. Therefore, I find there to be insufficient evidence to prove the Landlord had a "for rent" sign posted at their building between April 30, 2014 and May 31, 2014.

The documentary evidence supports that the Landlords waited until June 9, 2014 to place their advertisement online and the advertisement indicates the unit was not available until July 1st. I do not accept the Landlord's argument that they could not commit to a new tenancy until the

existing tenant physically moved out; because section 44 of the Act stipulates that a tenancy ends on the effective date of a Tenant's notice and the Residential Tenancy Policy Guideline # 11 provides that neither a tenant nor a landlord can unilaterally withdraw a Notice to End Tenancy.

Based on the above, it is clear that the Landlord made no attempt to re-rent the unit for June 1, 2014. I find the Landlord did not do what was reasonable to mitigate their loss of rent for June 2014 and therefore, the Landlord has not met all 4 criteria to prove their claim for compensation. Accordingly, I hereby dismiss the Landlord's claim, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

The Landlord has not been successful with their application; therefore, the Landlord is not entitled to retain the Tenant's security deposit. Accordingly, I hereby Order the Landlord to return the security deposit of \$550.00 plus interest of \$0.00 to the Tenant forthwith.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

The Landlord has been ordered to return the Tenant's security deposit forthwith. If the Landlord fails to comply with this Order, the Tenant may serve the Landlord with the enclosed Monetary Order for **\$550.00**. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: October 14, 2014

Residential Tenancy Branch

