



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Realty Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord attended with her agent and the named tenant called in and participated in the hearing. The application was brought in the name of the landlord's agent as landlord, although the agent did not act as landlord or perform any of the duties of the landlord during the tenancy. I have amended the application to name the actual landlords as well as the agent in the style of cause for this proceeding, based on the tenant's acknowledgement at the hearing that he has received all of the documents from the landlord and is well aware of the nature of the landlord's claims.

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 manufactured home on the landlord's property in Chilliwack. The tenancy began on August 1, 2013 for a one year term ending July 31, 2014, with monthly rent of \$950.00, payable on the first of each month. The landlord testified that the tenants moved out of the rental unit and proposed that the tenant's parent sublet the unit. The tenants and the parents vacated the unit at the end of September, 2013.

After the tenants moved out they gave the landlord their forwarding address in writing and then applied for dispute resolution to claim the return of the deposit. By decision dated March 12, 2014 an arbitrator awarded the tenants the sum of \$1,000.00. the landlord applied to review the decision and was granted a review hearing. The review

hearing was conducted on June 3, 2014. The landlord and the tenants participated in the hearing and the arbitrator confirmed the original decision and order awarding the tenants the sum of \$1,000.00.

The landlord said that she was unable to re-rent the unit until December 1, 2014 and then at a reduced rent of \$850.00 per month. The landlord claimed loss of revenue for October and November in the amount of \$1,900.00 and a rent differential of \$100.00 per month for the remaining eight months of the fixed term tenancy, for a total award of \$2,700.00. The landlord sought to apply the security deposit against the amount claimed, but the security deposit has already been dealt with in the earlier proceeding when the tenant was awarded the return of the deposit, including double the amount.

The landlord submitted a copy of a written tenancy agreement with her new tenant that contradicted her oral testimony. The copy agreement submitted by the landlord recorded that the new tenancy commenced on November 1, 2014, not on December 1, 2014. At the hearing the landlord said that the written agreement was incorrect.

The tenant testified that the landlord agreed to allow the tenants to end the tenancy early and told him that the landlord would be able to find new tenants without help. The tenant said that he would have been able to find new tenants and questioned why the landlord accept a tenant who paid \$100.00 less per month.

The landlord testified that she took immediate steps to advertise for new tenants, but the vacancy came at a bad time of year with winter approaching so she was forced to accept a lower monthly rent in order to acquire a new tenant.

Analysis

The landlord submitted documentary evidence showing that she entered into a new tenancy agreement that commenced on November 1, 2014. I do not accept the landlord's oral testimony given to contradict her own written evidence. I find that the tenants ended the fixed term tenancy agreement without consent and without any commitment by the landlord to forego a claim for loss of rental income. I accept the landlord's testimony that she took proper steps to find a new tenant and I find that she acted reasonably in her efforts to mitigate her damages by seeking out a new tenant. I find that the landlord is entitled to recover loss of rental income for the month of October in the amount of \$950.00 and for the rent differential of \$100.00 per month for the following nine months. The total award to the landlord is the sum of \$1,850.00.

Conclusion

I have awarded the landlord loss of rental income in the amount of \$1,850.00. The landlord is entitled to recover the \$50.00 filing fee for this application and I grant the landlord an order under section 67 in the sum of \$1,900.00. This order may be registered in the Small Claims Court and enforced as an order of that court. If unpaid the amount due to the tenants may be set off against this award.

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: January 13, 2015

Residential Tenancy Branch

