



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for compensation for unpaid rent, loss of revenue, to recover the filing fee for this proceeding and to keep the tenant's security deposit in partial payment of those amounts. Both the landlord's agent and tenant attended the conference call hearing.

Issues(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent loss of revenue and if so, how much?

Background and Evidence

The tenant admitted service of the landlord's application. Based upon the evidence of AO agent for the landlord I find that this one year fixed term tenancy started December 1, 2013 and ended on April 1, 2014 when the tenant moved out prior to the end of the term. Rent was \$ 1,375.00 per month payable in advance on the 1st day of each month. The tenant paid a security deposit of \$ 677.50 and key deposit of \$ 50.00 on November 18, 2013.

AO testified that she was advised by the tenant that the tenant intended to end her tenancy earlier than the end of the fixed term as she could no longer afford the rent. AO testified that on February 6, 2014 she met with the tenant and advised her that she must give the landlord written notice that she intended to end her tenancy and when she planned to move out to enable the landlord to begin to find replacement tenants. AO testified that she left the documents that the landlord required the tenant complete and sign to fulfil this purpose. AO testified that on March 3, 2014 the landlord received a handwritten note from the tenant indicating that she planned to move out on April 1, 2014. AO testified that the landlord immediately began looking for new tenants for that unit but as the building was new the landlord had many other vacant units and was only able to re-rent the unit for June 1, 2014. AO testified that the tenant moved out on April 1, 2015 but did not pay rent for March 2014 or April 2014. The landlord is claiming for

those two months loss of rent and loss of revenue for June 2015 totalling \$ 4,125.00. The landlord is also claiming for \$ 25.00 for an NSF charge which occurred in March 2015. AO testified that she conducted a move out inspection on May 12, 2014 and on that date the tenant signed a document accepting responsibility for the sum of \$ 4,150.00 and agreeing to the landlord retaining her security and key deposit in partial payment of that sum.

The tenant CG testified that in January she texted S a manager for the landlord advising her that she could no longer afford her rent and wanted to move as soon as possible. CS was directed by S to deal with AO. CG testified that she advised AO of her desire to move and met with her in January to confirm this. She was testified that AO advised her to find another job to help pay the rent but admitted that AO also informed her that the landlord required written notice of her intention to vacate in order to take steps to attempt to re-rent the unit. CG testified that she herself attempted to re-rent the unit by posting ads on line. CG testified that she delivered to the landlord her handwritten notice to vacate effective April 1, 2014 the unit dated February 13, 2014. CG testified that AO texted her that her unit was a low priority to re-rent as there were other units the landlord wished to rent sooner. CG admitted to signing a document on May 12, 2014 agreeing to the landlord's claim of \$ 4,150.00 because she felt the whole process of dealing with AO was unpleasant and that she felt compelled to or she would not be permitted to get her mail. CG admits not paying rent for March and April but submitted that the landlord's claim was excessive as they should have rented the unit much sooner.

AO in reply denied stating that the tenant's unit was a low priority and denied pressuring the tenant to agree to the claim. AO testified that in fact it was the tenant who possessed both the unit and mailbox keys until May 12, 2014.

Analysis

I find that the landlord and tenant were bound by a valid fixed term tenancy ending on November 30, 2014. I find that the landlord did not have notice of the tenant's intention to vacate the unit until they actually received a written notice confirming the tenant's intention to vacate and on what date that might be as required by section 45 and 52 of the Act.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form

I find that all of the other conversations the tenant had with the landlord's agents were of what the tenant might do or wished to do but not of what she actually intended to do as required by the section 45 (1) and (2) and 52 of the Act. I find that the tenancy did not end until the landlord received and accepted a notice from the tenant dated February 13, 2015 which the landlord alleges it received on March 3, 2014. That notice was effective on April 1, 2014. I find that the landlord accepted the tenant's notice and began to search for replacement tenants at that time.

I find that I am not able to consider whether the landlord's attempts were sufficient to re-rent the unit as the tenant agreed in writing on May 12, 2014 to the landlord's claims for the loss of three month's rent inclusive of revenue and an NSF fee totaling \$ 4,150.00.

I find that it made no sense that the tenant would sign such a document agreeing to the landlord's claim if she believed that the landlord's claim was excessive or that the landlord had not attempted to re-rent the unit sooner. I also find that the tenant's submission that she felt pressured to sign the document, because of the "whole process was unpleasant" and in "order to obtain her mail" unfounded on the evidence or in law and illogical as she had possession of her keys up to and including the time she signed the document.

Therefore I find that the tenant was bound by the document she signed on May 12, 2014 agreeing to the landlord's claim of \$ 4,150.00 and permitting the landlord to retain her security deposit and Key deposit in partial payment of that amount.

I find that the landlord has proven a claim totalling \$ 4,150.00. As the landlord has been successful in this matter, I find pursuant to s. 72 of the Act that they are also entitled to recover the \$50.00 filing fee for this proceeding. I order the landlord pursuant to the signed agreement dated May 12, 2014 and s. 38(4) of the Act, to retain the tenant's security deposit inclusive of interest amounting to \$ 687.50 and key deposit of \$ 50.00 in partial payment of the rent arrears and loss of revenue. The landlord will receive a Monetary Order for the balance owing of \$ 3,462.50.

Conclusion

In summary I ordered that the respondent pay to the applicant the sum of \$ 4,150.00 in respect of this claim plus the sum of \$ 50.00 in respect of the filing fee for a total of \$ 4,200.00. I order that the landlord retain the security deposit amounting to \$ 687.50 inclusive of interest and key deposit of \$ 50.00. I grant the landlord a Monetary Order for the balance in the amount of **\$ 3,462.50** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 28, 2015

Residential Tenancy Branch

