



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and/or lost rental income, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on October 7, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears or lost rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or lost rental income and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?

Background and Evidence

This tenancy was to start on June 30, 2014 as a fixed term tenancy with an expiry date of January 1, 2015. The Tenancy agreement was signed on June 5, 2014. Rent was \$2,550.00 per month payable in advance of the 1st day of each month. The Tenants did not pay any deposits. The Landlord said the Tenants advised her on June 19, 2014 that they were not moving into the rental unit. The Landlord submitted a copy of a letter from the Tenants saying they were not moving in to the unit dated June 20, 2014, and a Mutual Agreement to End Tenancy dated June 20, 2014 that indicates the parties agree to end the tenancy on June 20, 2014 at 1:08 p.m. In addition the Landlord submitted an Addendum to the Mutual Agreement to End Tenancy dated June 27, 2014 that indicates the Tenants would pay the Landlord \$4,800.00 in compensation for potential rental losses by not moving into the rental unit.

The Tenant and the Tenants' Counsel said they are disputing the Addendum to the Mutual Agreement to End the Tenancy and the intent of that agreement. First the female Tenant said she was under stress when she signed it and she does not remember clause 5. Clause 5 is a hand written clause on the agreement indicating the Tenants would pay the Landlord \$4,800.00 on August 1, 2014, the rest of the agreement is type written. The Tenants' Counsel continued to say that the intent of the agreement is to mitigate the Landlord's losses. The Tenants

counsel said the Landlord could do this by putting new tenants in the rental unit. The Tenants Counsel continued to say the Landlord has not shown that she mitigated her losses adequately and therefore is not entitled to lost rental income. The Tenants' Counsel said the Landlord could have had a renter in the unit for the full time of the fixed term tenancy and therefore would not have suffered loss. The Tenants and counsel said the Landlord did not mitigate her loss adequately by advertising the unit for the full fixed term of the tenancy agreement.

The Landlord said the Mutual Agreement to End the Tenancy clearly states the Tenants would pay her \$4,800.00 as compensation for lost rental income. As well the Landlord continued to say she re-rented the unit 4 days after the Tenants told her they were not moving in. The Landlord said the new tenant stayed for 4 months and then the unit was empty for November, 2014 and rented again for December, 2014. The Landlord said she thought the July to November tenant would stay longer than November 1, 2014 so she did not advertise the unit for December, 2014 until the middle of November, 2014 after the tenant moved out. The Landlord said she agrees that she actually lost 1 month's rent of \$2,550.00, but she believes the Mutual Agreement to End Tenancy should be enforced as written.

Further the Landlord continued to say that she has also claimed the costs of a Private Investigator in the amount of \$525.00 to find and serve the Tenants the application and hearing package. The Landlord said the Tenants did not give their forwarding address to her and the Tenants did not return her phone calls and emails.

The Tenants said they gave the Landlord a forwarding address for mail in an email dated July 10, 2014. The Tenants said they did not submit this email as evidence. The Tenants' Counsel said the Landlord had the Tenants emails and phone numbers as well as the mailing address therefore the Landlord should not be successful in recovering the Private Investigators fees. The Landlord said she did not have the Tenants correct address and the Tenants did not answer her emails and phone calls. It should be noted that neither party submitted copies of emails nor phone records to prove any communication between the parties after June 22, 2014.

The Landlord also requested to recover the filing fee of \$100.00 if her application is successful.

The parties were offered an opportunity to settle this matter under section 63 of the Act and the Tenants declined the offer.

The Tenants Counsel said in closing the Addendum agreement has the intent to minimize the Landlord's loss with a maximum amount of \$4,800.00 in clause #5. The Landlord is now claiming for \$4,800.00 when the actual loss is one month's rent for November, 2014 of \$2,550.00. The Tenants believe the Landlord did not try to mitigate her loss as well as she should have. The Tenants' Counsel said the Landlord has not proven that she mitigated her loss adequately. Further the Tenants' Counsel said the Private Investigator's costs should not be successful as the Landlord had the Tenants' contact information by a forwarding mail box address even though it was not their home address and emails and phone numbers. The Tenants and the Tenants' counsel said the Landlord should not be successful in her claim as she did not mitigate her loss adequately.

The Landlord said in closing that she did mitigate her loss by renting the unit four days after the Tenants told her they were not moving in and she rented the unit for \$50.00 a month more than the Tenants were paying. Further the Landlord said she thought the tenant would stay longer

that November 1, 2014 so she did not advertise until the tenant moved out. The Landlord said she did find a tenant for December 1, 2014.

With regard to the Private Investigator fees the Landlord said she tried to contact the Tenants but they were unresponsive so she thought this was her best option.

Analysis

Section 16 of the Act says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or **with the agreement of the Landlord.**

In this situation the parties agreed to a Mutual Agreement to End the Tenancy which was signed on June 20, 2014 and an Addendum to that agreement that was signed of June 27, 2014. I find the tenancy end by mutual agreement and the Mutual Agreement and the Addendum are valid and enforceable.

Further:

Section 7.2 of the Acts says (2) a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord said she mitigated her loss by renting the unit for four months from July 1, 2014 to November 1, 2014 and then from December 1, 2014 to the end of the fixed term tenancy of January 1, 2015 or further with other tenants. Consequently the Landlord's actual loss from this tenancy is the rent for November, 2014 in the amount of \$2,550.00.

In this situation the Landlord found a new tenant 4 days after the Tenants informed the Landlord they were not moving in and the Landlord found a new tenant within ½ a month of the second tenant moving out. Consequently, I find the Landlord has mitigated her loss in an adequate manner. I find for the Landlord and award the Landlord \$2,550.00 in lost rental income for the month of November, 2014.

Further the costs of the Private Investigators fees of \$525.00 are not part of the tenancy or tenancy agreement but are costs incurred by the choice of the Landlord in preparation for the hearing proceedings. Costs that are part of the hearing proceedings are not eligible claims under the tenancy dispute process. I dismiss the Private Investigators costs as ineligible claims to this tenancy dispute.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Lost rental income:	\$ 2,550.00
Recover filing fee	\$ 100.00
Subtotal:	\$2,650.00
Balance Owing	\$2,650.00

Conclusion

A Monetary Order in the amount of \$2,650.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 11, 2015

Residential Tenancy Branch

