



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Saanich Peninsula Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for a monetary order and an order for the return of her deposit. Both parties participated in the conference call hearing.

At the hearing, the landlord asked to amend their claim from \$1,700.00 which represented the loss of December's rent to \$2,500.00 which included a further loss of \$200.00 per month in income from January – April. The tenant did not take a position on the landlord's request for an amendment. I determined that as the landlord's was for lost income and as they did not know the extent of that loss at the time they filed their claim and as the tenant appeared at the hearing prepared to defend a claim for loss of income, there was less prejudice to the tenant in permitting the amendment than there would be to the landlord in allowing the amendment. I therefore permitted the amendment.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 28 or 29, 2014 and that the tenant vacated the rental unit on November 4, 2015. They further agreed that rent was set at \$1,700.00 per month and that the tenant paid a security deposit of \$850.00. They agreed that the rental unit is on the upper floor of a home in which the owner occupied a suite in the lower floor. They further agreed that the owners were scheduled to leave on vacation for the winter by November 5 and that they would not be returning to the home until the spring, when the fixed term tenancy agreement was scheduled to end.

The tenant testified that her understanding was that she understood that she would have exclusive use of the laundry room and when she moved into the unit, she was surprised to discover one of the owners doing laundry in the rental unit. She testified that she was also given a list of other parties including neighbours who had keys and she was uncomfortable with the idea of other parties having access to the unit. The tenant testified that on October 31 she gave the landlord's agent notice that she was vacating the unit and that she did indeed vacate on November 4.

The landlord's agent testified that in an email exchange on October 11, he advised the tenant that the laundry would be shared for a short time until the owner had completed constructing a laundry area in their own suite and that the renovations to the owner's suite were scheduled to be completed approximately around the time when the owners were scheduled to leave for vacation. The agent testified that he and the owners were willing to either change the locks or retrieve the keys from those parties who had copies, which they had been given in order to access the unit in the event of an emergency.

The tenant denied having been told on October 11 that the laundry was shared and claimed that she never would have rented the unit if she had been aware that laundry was shared.

The landlord seeks to recover lost income for December 2014 and \$200.00 per month in rent differential for the months of January – April 2015, which is the balance of the fixed term. He testified that despite advertising throughout November and December, he was unable to re-rent the unit at the same rate and that when he secured a new tenant in January 2015, the new tenant only agreed to pay \$1,500.00 per month.

The tenant seeks to recover the rent paid for the month of November as well as her moving expenses.

Both parties seek to recover the filing fees paid to bring their applications.

Analysis

The tenant was under a contractual obligation to pay rent until the end of the fixed term, which did not expire until April 2015. Section 45(3) of the *Residential Tenancy Act* provides that the only way in which the tenant could unilaterally end the tenancy prior to the end of the fixed term would be to advise the landlord in writing that he had breached a material term of the tenancy, give them a reasonable period of time in which to remedy the breach and only then end the tenancy after the landlord had failed to correct the problem. In this case, even if it were a material term of the tenancy that the tenant have exclusive use of the laundry room, the tenant did not provide written notice to the

landlord of that breach. I find that the tenant failed to follow the provisions of the Act and was therefore not entitled to end the tenancy early as she did not provide the landlord with opportunity to remedy the breach. I note that as the owners left for their vacation shortly after the tenant vacated the unit, the problem would have been rectified very soon in any event.

I find that the tenant breached her obligation under the contract and the Act and is therefore liable for the landlord's losses. I order that the tenant compensate the landlord for those losses, which include \$1,700.00 in lost income for December and \$800.00 in lost rent for the months of January – April. As the landlord has been successful in their claim, I find they should also recover the \$50.00 filing fee and I award them that sum as well, for a total entitlement of \$2,550.00. I order the landlord to retain the \$850.00 security deposit in partial satisfaction of the claim and grant them a monetary order under section 67 for \$1,700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the landlords have not breached their obligation under the Act and the tenant is responsible for her own losses, I dismiss her claim in its entirety.

Conclusion

The tenant's claim is dismissed and the landlord is granted a monetary order for \$1,700.00. The landlord will retain the security deposit.

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: July 10, 2015

Residential Tenancy Branch

