



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, OPR, SS, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, loss of rent revenue, damage to the rental unit, to retain the security deposit, an order of possession for unpaid rent, to serve by a substitute method and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on December 6, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were personally handed to the male tenant. The tenants had given the landlord a forwarding address. When the landlord attempted to personally serve to that address she was told the tenants lived elsewhere. The landlord then went to the address where the tenants were currently residing and she was able to hand the male tenant the hearing packages. The female tenant was present but the landlord did not communicate with her or give her the hearing package. The female tenant's hearing documents were given to the male tenant.

Service occurred at approximately 6:30 p.m. with the landlord's sister present as a witness.

These documents are deemed to have been served to the male tenant on December 6, 2014, in accordance with section 89 and 90 of the *Act*; however the tenant did not appear at the hearing.

I find that the female tenant was not served with Notice of the hearing. She was not personally given a hearing package and I have no confidence the male tenant provided her with a copy.

Preliminary Matters

The landlord said that a copy of a 10 day notice to end tenancy for unpaid rent was supplied as evidence. I did not have any written submissions before me. The landlord confirmed that no other evidence had been supplied.

The tenants vacated on November 21, 2014; an Order of possession is not required.

The total sum claimed by the landlord was \$24,500.00. This included a claim of \$1,000.00 for carpet cleaning which was withdrawn by the landlord.

Issue(s) to be decided

Is the landlord entitled to compensation in the sum of \$10,000.00 for unpaid rent?

Is the landlord entitled to compensation in the sum of \$13,500.00 for loss of rent revenue?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on September 1, 2014. Rent was \$5,000.00 per month due on the first day of each month. This was a fixed-term tenancy agreement ending on August 30, 2015 at which time the tenancy would continue on a month-to-month basis.

The tenant paid only the first months' rent and a \$2,500.00 security deposit. On November 15, 2014 the landlord gave the tenant a 10 day Notice to end tenancy for unpaid rent. The Notice had an effective date of November 25, 2014. The tenant did not dispute the Notice, did not pay the rent and vacated on November 21, 2014. The tenant gave the landlord a forwarding address. The landlord applied claiming against the deposit in November 28, 2014.

As soon as the tenant vacated the landlord began to advertise on two local popular web sites. The community is resource-driven and the rental market had changed since the tenancy agreement had been signed. The landlord sought \$3,500.00 rent per month, in an attempt to mitigate the loss of rent revenue. In early January 2015 the property was viewed by the only person who showed interest. Later that month a fixed term agreement was signed and the tenancy commenced on February 1, 2015 for \$3,500.00 per month.

The landlord is claiming compensation for unpaid October and November 2014 rent revenue in the sum of \$10,000.00.

The landlord is claiming loss of rent revenue; the difference between the rent included in the fixed-term tenancy agreement and the rent the landlord was able to achieve. The landlord lost rent revenue in the sum of \$1,500.00 each month from December 2014 to July 2015; totalling \$13,500.00.

The landlord did not submit a copy of the signed tenancy agreement. The landlord was asked to supply a copy of that agreement no later than July 14, 2015. A copy of a 10 day Notice issued to the tenant was also requested. The landlord made the submissions, as requested.

The tenancy agreement was signed by the parties on August 12 and 15th, 2014. The fixed-term commenced on September 1, 2014 and was to end August 30, 2015. Rent was \$5,000.00 per month due on the first day of each month.

The landlord offered to supply copies of the advertisements; I declined and told the landlord I would rely on her affirmed testimony in relation to the advertising that occurred.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

The landlord has provided affirmed testimony that I found consistent and reliable. The landlord supplied a copy of the tenancy agreement signed by the tenants in August 2014. A copy of the tenancy agreement signed by the new tenants for the February 1, 2015 tenancy and the 10 day Notice ending tenancy was also submitted.

From the evidence before me I find that the tenancy ended on November 21, 2014 when the tenants vacated the rental unit. .

I find that the landlord complied with section 38 of the Act by claiming against the security deposit within 15 days of November 21, 2014.

The male tenant was served with Notice of this hearing but failed to attend the hearing or have an agent appear on his behalf to dispute this claim. I find that a fixed-term tenancy commenced with the respondent effective September 1, 2014 and that the tenant paid only the first months' rent and the security deposit in the sum of \$5,000.00 and \$2,500.00 respectively. Therefore, in the absence of evidence to the contrary, I find, on the balance of probabilities that the tenant has not paid rent in the amount of \$10,000.00 for October and November 2014.

I find that the landlord did attempt to mitigate the loss of rent revenue by advertising the rental unit quickly and by immediately reducing the sum of rent sought. The landlord recognized the economic climate had changed and that rent in the sum of \$5,000.00 would not be achieved. After two months of advertising a new tenant was identified and a tenancy agreement signed on January 10, 2015 which commenced effective February 1, 2015.

In relation to the loss of rent revenue, I find that the tenant breached the Act when rent was not paid and, as a result the tenancy ended in accordance with section 46 of the Act when the tenant vacated.

I have considered Residential Tenancy Branch (RTB) policy, which suggests a landlord may be compensated up to the earliest time that the tenancy could legally end. In this case that date is to July 2015, the most recent month. Policy suggests a landlord may be compensated for the difference between what the defaulting tenant was required to pay and the sum received when the unit was re-rented, to the end of the un-expired term of the tenancy. I find this takes a reasonable stance.

Therefore, I find that the landlord has proven a loss rent revenue from December, 2014 to July 1, 2015 in the sum of \$19,000.00 (December \$5,000.00; January 2015 \$5,000.00; February – July 2015 \$1,500.00 per month.).

The total sum claimed for unpaid rent and loss of rent revenue was \$23,500.00. Therefore, pursuant to section 67 of the Act I find that the landlords entitled to compensation in the sum claimed on the application, \$23, 500.00.

As the landlords' application has merit I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find, pursuant to section 72 of the Act, that the landlord is entitled to retain the tenants' security deposit in the amount of \$2,500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$21,100.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$10,000.00 for unpaid rent.

The landlord is entitled to compensation for loss of rent revenue in the sum of \$13,500.00.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 15, 2015

Residential Tenancy Branch

