



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the tenant resides on March 17, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 20, 2014 and end on August 19, 2015. The rent is \$2000 per month. The tenant paid a security deposit of \$1000 at the start of the tenancy.

On December 30, 2014 the tenant gave the landlord one month written notice that the tenant was vacating at the end of January. On January 4, 2015 the landlord responded saying this is a fixed term tenancy and that the tenant was responsible to pay the rent for the entire fixed term or until they can sublet to a new tenant. The tenant vacated the rental unit at the end of January 2015.

The landlord makes the following claims:

- Rent loss for 6 months and 20 days - \$13,290
- Advertising expenses - \$670.95
- Keep damage deposit.

The landlord testified as follows:

- The landlord was not able to re-rent the rental unit despite trying.
- The landlord suspects the reason for being unable to re-rent is because the rental unit is too small, it is in Burnaby or was available for 6 months only.
- The agent produced his notes starting on February 5, 2015 to March 12, 2015 where he fielded phone calls from people interested in renting the rental unit.
- He produced an invoice in the sum of \$166.95 from a newspaper classified service for the period running January 29, 2015 to February 18, 2015.
- He produced an invoice dated April 23, 2015 from PH Corp for the period 2015-04-24 to 2015-10-23

The tenant disputes the landlord's claims alleging the following:

- The landlord failed to prove he has mitigated his loss.
- The newspaper advertisement end on February 18, 2015. His notes of fielding telephone calls ended on March 12, 2015.
- He produced letter from the property manager which states a conversation occurred between the landlord, the regional property manager and another agent where they discussed the sublet. The letter states the parties originally agreed but later, she was told that she was no longer required to draft a tenancy agreement.
- The agent for the tenant testified he had a client that was prepared to sublet but the landlord refused to rent to them because they had a small child.

Analysis:

After carefully considering all of the evidence I determined the tenant has breached the fixed term tenancy agreement and is obliged to compensate the landlord.

However, section 7(1)(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (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.

I do not accept the submission of the tenant that he had another person to sublet the rental unit starting February 1, 2015. The tenant failed to present evidence from that person. He subsequently rented a different rental unit for a substantial lower rent. There is insufficient evidence that the other person would have rented this unit.

However, I determined the landlord failed to present sufficient evidence to establish he is entitled to recover loss of rent for the entire fixed term. The notes of the agent for the dealing with responses relating to the rental unit ended on March 12, 2015. The landlord failed to produce evidence that advertisements were placed either on line or in the newspapers after that date. The owner did not attend the hearing and did not present evidence to the effect he was returning back to the rental unit at the end of the fixed term. In the absence of that type of evidence I cannot conclude that the landlord was complying with his obligations to mitigate by restricting his search for prospective tenants for the remaining portion of the fixed term. In the circumstances I determined the landlord is entitled to recover loss of rent for February and March. However, I dismissed the claim for loss of rent for the period after that date and the landlord failed to present sufficient proof to establish he has mitigate his loss. I also determined the landlord is entitled to the newspaper advertizing costs in the sum of \$166.95 for the advertising that took place during this time. However, I dismissed the claim in the sum of \$504 for the advertising for work done after that time as that is not the tenant's responsibility.

Monetary Order and Cost of Filing fee

In summary I ordered that the tenant pay to the landlord the sum of \$4166.95 plus the \$50 filing fee for a total of \$4216.95.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1000. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3216.95.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: August 19, 2015

Residential Tenancy Branch

