



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Park Royal Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting return of the security deposit.

The landlord applied requesting compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord's application included a claim for loss of rent revenue and administrative fees, as set out in the details of the dispute section.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,250.00 for loss of rent revenue and \$100.00 for administrative fees?

May the landlord retain the security deposit or should it be returned to the tenant?

Background and Evidence

There was no dispute that on December 19, 2013 the tenant signed a tenancy agreement. A copy of the tenancy agreement supplied as evidence set out a fixed-term tenancy agreement that was to commence on March 1, 2014 and end on February 28, 2015, at which time the tenancy could continue on a month-to-month term. Rent was \$2,250.00 per month, due on or before the first day of each month. A security deposit in the sum of \$1,125.00 was paid.

The landlord said that when they sign a fixed-term agreement and accept the security deposit they will return the deposit to a tenant if they decide, within a five day period of time from signing the contract; that they no longer wish to proceed with the tenancy.

The parties agreed that the tenant did not move into the rental unit. There was a dispute in relation to how the tenancy was ended and whether the landlord suffered a loss of rent revenue.

The tenant said that on February 15, 2014 he told the landlord he would not be able to move into the unit on March 1, 2014. The tenant said that he reached an agreement with the landlord for a move-in date of May 1, 2014; however a new unit was not assigned to the tenant.

The tenant stated that on February 16, 2014 he sent an email to the landlord when he suggested they begin to show the unit. The tenant said he was told he would not have to pay rent for March, 2014.

By March 22, 2014 the tenant told the landlord he would not be moving in to any unit. There was considerable discussion regarding the events that occurred once the tenant informed the landlord he would not take possession of the rental unit. There was agreement that the tenant had said he might like to rent a one bedroom unit rather than the two bedroom unit he was to move into on March 1, 2014.

The landlord read from an email sent by the agent who had communicated with the tenant at the start of the tenancy; she is no longer working for the landlord. The email indicated that the tenant could have a new apartment within one or two months, but that there could be no "hold-over."

On March 26, 2014 the landlord sent the tenant an email saying they were sorry he would lose his security deposit; that the deposit could not be put over to a new tenancy for one to two months as the tenant was cancelling his tenancy.

The landlord said that on February 17, 2014 a security deposit was paid by the new tenants who were able to take possession of the rental unit on April 1, 2014.

The landlord testified that they lost rent revenue for March 2014 and that they had not agreed the tenant would not be responsible for payment of that rent.

The landlord called the past agent into the hearing to testify. This individual was then affirmed. The parties were given the opportunity to ask questions.

The agent said that she recalled the tenant telling her had had to cancel the tenancy and that the unit should be rented to someone else. The agent and tenant did discuss the possibility of renting another unit but the tenant was told the landlord could not hold the deposit for a number of months while waiting for a new unit to come up. This is what the agent has referred to as "holding over."

Once the agent was informed that the tenant was not going to move into the unit she promoted the unit and within several days was able to locate a new tenant for April 1, 2014. The agent said she told the tenant he would lose his security deposit which would be used against March 2014 rent, but that she would forgive him the balance of March rent owed. The agent said she recalled being very clear with the tenant and that later she told the tenant he was, technically, responsible for all of March 2014 rent but that if they kept the deposit they would not charge the balance of the rent owed.

The tenant asked the agent if she could recall the last time that had talked; the agent could not. The tenant asked the agent about the discussions they had in relation to a different unit. The agent said she knew the tenant had been looking for a unit for some time and that when they gave notice the tenant had said he wanted a one bedroom, not a two bedroom unit, in the future. The agent said she explained she could not keep the deposit for a long period of time and that a new deposit would have to be paid.

The tenant responded that there had never been any discussion about paying possible revenue loss and that payment was first raised on March 25, 2014.

The landlord has claimed the loss of March 2014 rent revenue and a \$100.00 administrative fee for advertising, staff and accounting costs.

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.

I find that when the tenancy agreement was signed by the parties on December 19, 2014 the tenant agreed to take possession of the rental unit effective March 1, 2014. I find that the tenant agreed to pay \$2,250.00 rent for a fixed-term to February 28, 2015.

I have considered section 45(2) of the Act, which provides:

(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.

From the evidence before me I find that the terms of the tenancy agreement required the tenant to possess the unit for the fixed period of time.

I have considered the testimony of the parties and found the landlord's agent provided spontaneous and reliable testimony. The agent could not recall some of the details of conversations or dates she communicated with the tenant, but she was consistent in her submissions. I found that the agents submission that the tenant was told the landlord would be keeping the deposit was, on the balance of probabilities, communicated when the tenant told the agent he would not move into the rental unit. The agent presented as being well aware of the need to mitigate the loss of rent revenue and located new tenants very quickly. I found this consistent with the agents' submission that she would also have warned the tenant he would lose his security deposit. On such short notice new tenants could not take possession until April 1, 2014.

It appears that both parties did not fully understand their obligations and rights. In the absence of a signed mutual agreement, ending the fixed-term tenancy agreement I find that the tenant ended the tenancy in breach of section 45 of the Act. There was no evidence that convinced me there was a meeting of the minds in relation to ending the tenancy. The landlord accepted it was ending, but I find that did not mean there was agreement.

Therefore, pursuant to section 44(f) of the Act I find that the tenancy ended effective February 17, 2014, when the landlord accepted a security deposit from the new tenants.

The tenant said he did not supply the landlord with a written forwarding address, as the landlord told him they were keeping the deposit. I find, on the balance of probabilities, that the email sent to the tenant on March 22, 2014 was reiterating what the tenant had been told when he informed the landlord he would not move into the unit; that a search for new tenants was required and the landlord would keep the deposit. However, the landlord was incorrect in telling the tenant they would be keeping his deposit. The correct messaging should have been that once the written forwarding address was given the landlord would take the necessary steps as required by the legislation.

Matters appear to have been confused as the tenant then commenced discussions regarding rental of another unit; but those discussions had no bearing on the obligations related to the tenancy agreement that had been signed. The landlord quickly took the steps required to mitigate the loss of rent revenue and carried on communication in relation to the possibility of another tenancy.

Therefore, as the tenant ended the tenancy in breach of section 45 of the Act, I find pursuant to section 67 of the Act that the landlord is entitled to compensation in the sum of \$2,250.00 for loss of March 2014 rent revenue.

The landlord claimed \$100.00 for administrative duties. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to administrative time are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is dismissed and the landlord is at liberty to write it off as a business expense.

As the landlords’ application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant had a right to supply his written forwarding address to the landlord, no later than February 17, 2015. The tenant served the landlord his application for dispute resolution in April 2015; which allowed the landlord to submit their claim and serve the tenant.

As the tenant failed to provide the landlord with a written forwarding address within one year of the end of the tenancy I find, pursuant to section 39 of the Act that the tenant extinguished his right to return of the deposit. Section 39 of the Act determines that, in this case, a landlord may keep the security deposit. I find, pursuant to section 72 of the Act that the landlord is entitled to retain the deposit; and that the deposit is set off against the sum owed to the landlord. Section 39 of the Act is not intended to provide a windfall to the landlord.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,175.00. 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.

The tenants’ application is dismissed.

Conclusion

The landlord is entitled to compensation for the loss of March 2014 rent revenue.

The claim for administrative costs is dismissed.

The landlord may retain the security deposit which is set off against the sum owed to the landlord.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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: September 23, 2015

Residential Tenancy Branch

