Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was convened in response to un-amended cross applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The landlord filed their initial application on May 31, 2015 for an Order to recover a revenue loss for July 2015 in the amount of $2090.00, retain the tenant's security deposit in partial satisfaction of their monetary claims, unspecified damages to the unit, and recovery of their filing fee.

The tenant filed their cross application on October 19, 2015, for the return of their security deposit and to recover their filing fee.

Both parties attended the hearing and were given full opportunity to present relevant evidence and make relevant submissions to their applications. The parties acknowledged receiving the applications of the other and all corresponding evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The hearing received new evidence from the landlord the day of the hearing. Any and all evidence received *after* October 27, 2015 is not *inadmissible* and will not be considered in the making of this Decision.

The tenant made their cross application on October 19, 2015 which they sent to the landlord by registered mail on the same date. Pursuant to Section 90 of the Act, an application is deemed received on the 5th day after it is mailed – October 24, 2015. The Rules of Procedure prescribe that a cross application must be submitted and given to the other side not less than 14 days before the hearing so that the respondent to the

cross-application can meet the service provisions under Rule 3.15 (Respondent's evidence) which require that the evidence of the other side be received not less than 7 days before the hearing. As a result, I determined the tenant's application did not meet the service requirements for a cross application and preliminarily **dismissed** the tenant's cross application. None the less, I accepted all their evidence of the application as their evidence in rebuttal to the landlord's initial application.

The landlord acknowledged filing a premature application for a monetary order for a perceived loss of revenue for the month of July, 2015 and to retain the deposit in partial satisfaction, as well as for unspecified losses due to possible damage in the unit. The landlord subsequently provided documents altering their original application, however did not amend their initial application to reflect their growing monetary claim for the purported damage to the unit. As a result, I determined the landlord's claim for damage to the unit as neither admissible nor relevant to their initial application and advised the parties I would solely hear the landlord's initial claim for loss of revenue and would be **dismissing** the un-amended portions of their application, *with leave to reapply*.

The hearing proceeded on the merits of the landlord's initial application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The parties each submitted an abundance of evidence of which only evidence relevant to this matter will be considered.

The tenancy began September 01, 2009 and was guided by a written tenancy agreement. The tenancy ended June 30, 2015 pursuant to the tenant's Notice to Vacate given to the landlord May 19, 2015.

During the tenancy rent in the amount of $2090.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $900.00, which the landlord retains in trust. On May 22, 2015 the landlord presented a viewing schedule to the tenant starting June 01, 2015 comprised of every Monday, Thursday and Saturday within June 2015 (13 dates) for the purpose of re-renting the unit for July 2015. The tenant provided testimony they found the schedule intrusive on their quiet enjoyment and seeming difficult to deal with in its anticipation given a newborn child, post birth issues, and visiting family; and, in turn proposed a different schedule to the landlord beginning June 08, 2015 of 2 days

per week. The landlord testified they posted an advertisement on Craigslist in early June 2015 and received responses to their advertisement but they did not follow through with arranging a viewing, given the tenant's proposal and the landlord's stated perception the tenant was hostile toward them. The parties each testified there was no personal communication over the viewing schedule. The tenant testified they would have welcomed a conversation over their mutual needs, but the landlord refused to speak to them. The landlord testified their perception was that all communication or notice was to be provided in writing and the tenant's proposal in their mind, was firm. As a result, the landlord testified they did not follow through on any interest expressed in the unit and, "did nothing for the rest of the month of June", in respect to seeking to re-tenant the rental unit.

The tenant testified their proposal for the viewings met their family's needs; however may have been flexible if the landlord would have responded to their attempts to communicating personally over the matter.

The landlord seeks for the tenant to compensate them for a loss of revenue for July 2015 because the tenant refused to allow viewings for prospective tenants in the early portion of June 2015.

Analysis

Full versions of the Act and referenced publications are available at www.bc.ca/landlordtenant.

I have reviewed all the relevant submissions to this matter. On the preponderance of all the relevant evidence of the parties, I find as follows.

I find the landlord was provided notice by the tenant in accordance with **Section 45** of the Act to end the tenancy June 30, 2015. I find the tenant did what they were required to legally end the tenancy. I accept the landlord developed a plan which they perceived the tenant fatally altered by their suggested change to the plan. I find the landlord chose to seek arbitration before making any effort to re-rent the unit. I find the landlord's evidence is that they did not arrange for any viewings of the unit during the month of June 2015 before the tenancy ended June 30.

Section 7 of the Act states as follows:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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 find that the landlord has not proven their loss of July 2015 revenue occurred because of the actions of the tenant in non-compliance with, or in violation of the *Act* or agreement. Regardless of whether the landlord does or does not meet this first part of the test established in **Section 7(1)** - the landlord's own evidence is that they failed to make a reasonable effort to minimize their losses by taking steps to re-rent the unit for July 2015 - so as to fail the second part of the test established in section **7(2)**. The tenant arguably may have impacted the landlord's original plan for re-renting the unit; but effectively, in the face of total inaction by the landlord toward re-renting the unit the landlord cannot then simply advance a claim for compensation from the tenant. As a result, the landlord's claim for loss of revenue for July 2015 fails and **is dismissed**.

Residential Tenancy Policy Guideline #17, in relevant part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In their application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because their application has been dismissed it is appropriate I Order the return of the tenant's security deposit of **$900.00.**

Conclusion

The application of the tenant **is dismissed**.

The landlord's application for loss of revenue **is dismissed**.

The landlord's application for damage to the unit **is dismissed,** *with leave to reapply;* if they have proof in support of a claim the tenant is responsible for conditions beyond reasonable wear and tear.

The tenant's security deposit is returned to the tenant. **I grant** the tenant a Monetary Order under Section 67 of the Act representing their security deposit, with no applicable interest, in the amount of **$900.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 09, 2015

Residential Tenancy Branch