



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Transpacific Realty Advisors
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application made September 29, 2015 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that documentary evidence was provided to the Tenant and the Residential Tenancy Branch (the “RTB”). The Landlord states that the materials provided to the RTB were given at the same time that the application was made. I note that the application was made online. The Tenant states that the only documents received from the Landlord were the notice of hearing and a list of demands. The Tenant could not recall if the list of demands was set out on an application for dispute resolution. Although the Tenant’s recall of the application is not good, given the evidence of having received a list of demands I found that the Tenant was likely given the application and therefore has been given sufficient notice of the claims of the Landlord. As no documentary evidence is available the hearing proceeded on the basis of oral evidence alone.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2015 on a fixed term to end March 31, 2016. Rent of \$720.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$360.00 as a security deposit. The Tenant moved out of the unit on July 31, 2015.

The Landlord states that it received the Tenant's forwarding address within a signed letter dated September 22, 2015. The Tenant states that the forwarding address may have been given that date.

The Landlord states that the Tenant gave notice to end the tenancy on July 3, 2015 to move out on July 31, 2015. The Tenant states that notice was under the office door on July 1, 2015 but that the Landlord had that day off.

The Landlord states that as soon as the notice was received an advertisement was placed online and a sign was placed on the building. The Landlord states that the advertisement ran until the unit was rented for September 1, 2015. The Landlord states that she has no idea what the advertisement stated and guesses that the unit was advertised at the same rental rate as was being paid by the Tenant. The Landlord states that no good potential renters were obtained prior to September 1, 2015 and that the Landlord does not know whether other units were available at the same time. The Landlord claims lost rental income of \$720.00 for August 2015. The Landlord states that the tenancy agreement includes a \$10.00 parking charge and the Landlord claims unpaid parking for August 2015. The Landlord states that the Tenant signed a move-out condition form agreeing to deductions from the security deposit.

The Tenant states that the rent sign is always on the building. The Tenant states that no agreement was signed on any costs at move-out. The Tenant states that the Landlord was represented by another person at move-out and that this person was very upset during the move-out inspection so the Tenant just left without signing the condition report. The Tenant states that he had no choice but to end the tenancy as a subsidized rental unit became available for him.

The Landlord states that the tenancy agreement includes a provision for liquidated damages and that the Tenant did not initial this provision at the time of signing the tenancy agreement. The Landlord claims \$720.00. The Tenant states that he was not aware of any agreement for any liquidated damages. The Tenant states that he thought he only had to pay the Landlord the sum of \$720.00 if the unit was not properly cleaned and that the Tenant paid cleaners to clean the unit.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that the claiming party must do whatever is reasonable to minimize the damage or loss being claimed. Give that there is no copy of the tenancy agreement to consider, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant is required to pay liquidated damages to the Landlord. Even if the tenancy agreement does contain a provision for liquidated damages, given the Landlord's evidence that the liquidated damages provision in the tenancy agreement was not initialed and considering the Tenant's evidence that he believed a sum was only payable if cleaning was not completed, I find that the Tenant was not aware of this part of the agreement and that in the circumstances it would be unconscionable for the Tenant to pay the amount claimed. I dismiss this claim.

The Landlord gave evidence that documents were provided to the RTB at the same time as the application was made. As the application was made online this evidence

lacks credibility and casts overall doubt on the Landlord's remaining evidence. As the Landlord's evidence of mitigation is vague, and accepting the Tenant's evidence that a vacancy sign is always on the building indicating more vacancies than the Tenant's unit, I find that the Landlord has failed to provide evidence of reasonable mitigation efforts in relation to the Tenant's unit. I therefore dismiss the Landlord's claim for lost rental income and parking for August 2015. As none of the Landlord's claims have been successful I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the Tenant's security deposit of **\$360.00** to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$360.00**. If necessary, this order may be filed in the Small Claims 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: April 15, 2016

Residential Tenancy Branch