



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC

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, compensation for damage or loss under the Act and to retain the security deposit held in trust.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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 relevant testimony provided.

Preliminary Matters

The parties confirmed receipt of documents within the required time limits.

Included in the tenants' submission was a decision issued on December 21, 2015 (see cover for file number.) The tenant has been awarded return of double the security deposit. As the claim against the deposit has been previously decided I explained that no further consideration of the deposit could be made; the matter has been decided and the landlord may not claim against the deposit.

The landlord said that payments are being made to the tenant, to satisfy the order to return the deposit. The landlord stated that her legal counsel advised that an arbitrator could remove a lien the tenant has placed against the landlords' property. I explained that an arbitrator does not have any authority to interfere with a lien.

The landlord has a claim for loss of rent revenue; not unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$450.00 for loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$70.00 for cleaning and \$50.00 for furniture removal?

Is the landlord entitled to compensation in the sum of \$350.00 representing the cost of locating a new tenant?

Background and Evidence

This fixed-term tenancy commenced on February 1, 2015. Rent was \$825.00 due on the first day of each month. The fixed-term was to end on February 29, 2016. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the tenant vacated the rental unit on April 18, 2015.

The landlord was in Florida during February 2015. The tenant telephoned the landlord to give notice. The landlord could not recall the date the tenant called or said she would vacate and believes the tenant did not provide a date.

The landlord said within 1.5 or two weeks of the telephone call she began to advertise. The landlord believes the advertisements were placed some time during the first week of March. The landlord stated that she advertised the unit on multiple internet sites and through other local services. The landlord could not provide dates of advertisements; copies were not supplied as evidence. When asked, the landlord said that the advertisements offered the rental as available immediately. When asked, the landlord said there was no record of showings of the unit.

The landlord said the tenant vacated on April 30, 2015, that the tenant "took off." The landlord said the tenant vacated at a difficult time of the year. The rental market was not good. The landlord said it was difficult to locate a tenant who did not smoke, who did not have pets and met the landlords' requirement for the ability to pay rent. The landlord stated that showing the unit while the tenant was there was difficult as the unit was full of boxes.

The landlord located a new tenant effective June 1, 2016. A copy of the new tenancy agreement was supplied as evidence.

The landlord has claimed \$450.00 for loss of rent revenue.

The landlord said that an inspection of the unit was not completed at the end of the tenant. The tenant asked the landlord to complete an inspection, but she just moved out. The landlord said when the tenant asked to complete the inspection the tenant wanted to complete it right at that time. The landlord did not complete the inspection and did not provide the tenant with a date and time for an inspection.

The landlord had to clean the unit as the tenant did not leave it clean. The landlord charged \$70.00 for her time.

The landlord said that the tenant left a table, garbage and boxes in the unit. The landlord hired someone to take these items out of the unit and paid \$50.00. The landlord said she could not move the table on her own so had to hire someone to move the table. The landlord gave the tenant 10 days after the tenancy to retrieve the table. The tenant did arrive and removed the table.

Throughout the landlords' testimony it was necessary to interject, in an attempt to remain focussed on the claim made. The landlord wished to discuss the tenants' mental state and other matters which I explained were not relevant to the claim made.

The landlord has claimed the cost of locating a new tenant, in the sum of \$350.00. 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. "Costs" incurred with respect to locating a new tenant are not contemplated by the Act. The landlord was informed that this portion of the application was declined due to jurisdiction.

The tenant submitted a time line of events that unfolded during the tenancy. The tenant supplied a copy of the written notice ending tenancy issued to the landlord on March 28, 2015. On March 28, 2015 the tenant placed a copy of the notice under the landlords' kitchen door, taped a copy to the front door of the landlords' house and sent two copies via email. The landlord did not respond to the emails. A call was then placed to the landlord to inform the landlord the tenant was leaving. The tenant gave 34 days advance notice.

Commencing March 29, 2015 the tenant began to monitor several popular web sites, both of which the landlord said were used, to see if the unit was being advertised. The first advertisement that appeared was on May 11, 2015, six weeks after the tenant had given notice to end the tenancy. The tenant supplied a copy of an advertisement she viewed on May 28, 2015, showing it was originally posted on May 11, 2015.

During April 2015 the landlord came to the rental unit with a male who appeared to be a possible new tenant. That individual said he would keep a round table that the tenant had in the unit. When the tenant vacated the table was left for that person as the tenant believed the unit had been rented to that person. When the tenant was informed that the table had been removed from the unit she was able to return to retrieve the table.

The tenant submitted copies of emails between the parties. On April 11, 2015 the landlord had emailed to say it was difficult to show the unit when she had been in the home on that date, as there were boxes everywhere. The tenant replied the next day to explain that boxes should be expected when a tenant is packing to leave. The tenant confirmed that she had understood the landlord would be showing the unit. The tenant offered to complete a move-out inspection report; the landlord did not offer a date and time.

The landlord said that individual who had discussed the table with the tenant was not appropriate as a renter and was rejected.

The tenant removed her belongings on April 17, 2015 and cleaned and vacated on April 18, 2015. Rent was paid to the end of the month.

The tenant suspected that there might be issues at the end of the tenancy; the landlord had been very upset that the tenant gave notice. The tenant took photographs throughout the unit, to demonstrate the state at the end of the tenancy. These photographs were supplied as evidence. One photo showed a single table in the corner of the living room. The photos showed a unit that was fully cleaned. The tenant pointed out that from the windows the time of year can be established as all the trees have leaves; indicating these photos were not taken at the start of the tenancy when leaves were not on the trees.

The tenant supplied a copy of an invoice issued by a professional carpet cleaning company. Even though the tenant was in the unit for just several months she did comply with the requirement to have the carpets professionally cleaned.

The landlord responded that the photos were taken at the start of the tenancy; that the tenant did not leave the unit in a clean state.

On April 26, 2015 the landlord emailed the tenant to say she would be at the unit on April 30, 2015 to receive the key and assist the tenant in moving the table out of the unit. On April 29, 2015 the landlord wrote that the table would be placed outside in the driveway from 12 noon on April 30, 2015. On April 30, 2015 the tenant went to the unit to retrieve the table. The landlord was present, was irate and refused to accept the keys from the tenant. The tenant left the property without the table. On May 9, 2015 the tenant retrieved the table from the driveway.

While the tenant testified during the hearing the landlord frequently interrupted and guffawed. The landlord was repeatedly asked to cease the interruptions and at one point was warned that the interruptions were not helping her case. The landlord was told that if the interruptions continued the landlord would be muted. The landlord was reminded that the tenant had quietly allowed the landlord to make submissions, with no interruptions.

Analysis

From the evidence before me I find, pursuant to section 44(f) of the Act, that the tenancy ended effective April 30, 2015. The tenant had paid rent to this date and attempted to return the keys on that date.

Section 45 of the Act sets out how a tenant may end a fixed-term tenancy agreement; which may occur based upon the breach of a material term of the tenancy agreement by the landlord. In the absence of any evidence of a breach by the landlord I find that the tenant breached the Act by ending the tenancy prior to the end of the fixed-term.

A breach of the Act by the tenant does not confer the right of automatic compensation to a landlord. Where the landlord or tenant breaches a term of the tenancy agreement or Act the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is set out in section 7 of the Act. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible.

I have considered the evidence before me and find that the landlord was given notice ending the tenancy no later than March 31, 2015; three days after notice was posted to the landlords' door. There was a history of the parties communicating by email; however the landlord did not respond to the emails sent. Therefore I have applied the deemed service provision of the Act for the notice posted to the door.

I would then expect the landlord to immediately commence advertising the rental unit. Even though the tenant had breached the Act, by giving notice, the landlord had to take steps to minimize the loss of any rent revenue. The fact that the landlord was not in the country has no bearing on the obligation to mitigate. The landlord could have had an agent act or placed the advertisements from her location.

The landlord did not supply copies of advertisements; could not provide dates advertisements were listed; could not provide information on showings of the rental unit or any detail that supported the claim that the rental market was slow. The landlord did not supply evidence of attempts to install a new tenant earlier than June 1, 2015; did not

provide any evidence of the number of replies to the advertisements the landlord said were placed, or any other details such as emailed replies to the advertisements.

The only evidence that some effort had been made to locate a new tenant was the email setting out a visit to the rental unit on April 11, 2015, when the landlord came to the rental unit with a male who the tenant believed was a new tenant. The landlord supplied no information about this individual other than to say he did not qualify as he smoked and had pets. The presence of that person leads me to accept that some effort had been made to show the unit to a prospective tenant.

Therefore, I find on the balance of probabilities that the landlord did make some efforts to locate a new tenant. However, in the absence of evidence providing details of efforts made, beyond the single showing of the unit, I find that the landlord is entitled to reduced compensation in the sum of \$189.84 representing seven days rent revenue. The balance of the claim for rent revenue is dismissed.

From the evidence before me I find that the claim for cleaning is dismissed. Section 37(2) of the Act provides, in part:

2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

From the evidence supplied by the tenant I find that the unit was clean and met the requirements of the Act. I have rejected the landlords' submission that the photographs were taken at the start of the tenancy and accept that the exterior shots indicate they were taken in the spring. Further, the presence of the table, left for the person the tenant thought had rented the unit provides what I find is irrefutable evidence that the photos were taken at the end of the tenancy. Therefore, I find that the claim for cleaning is dismissed.

The male who the tenant thought was going to move into the unit said he would keep a round table that the tenant had in the unit. The tenant then left the table for the new tenants' use. The landlord moved the table to the exterior of the home and said she paid someone to do this for her as it was too heavy. From the evidence before me I find that the landlord moved the table to driveway before the tenant was given an opportunity to move the table. The tenancy had not yet ended, yet the landlord had the table moved. Therefore, I find that the claim for moving furniture is dismissed. There was no evidence before me of any other items left in the unit that required removal.

Based on these determinations I grant the landlord a monetary Order in the sum of \$189.84. 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 \$189.84 for the loss of rent revenue.

Jurisdiction is declined in relation to the claim for costs incurred to find a new tenant.

The balance of the claim 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: October 18, 2016

Residential Tenancy Branch

