



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BK PRIME FALSE CREEK RESIDENCES HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on January 17, 2017. The Landlord applied for a Monetary Order for: unpaid rent and utilities; to keep the Tenant's security and pet damage deposits; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenant.

An agent for the company Landlord (the "Landlord") and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and her documentary evidence. The Landlord confirmed that she had received the Tenant's 50 pages of documentary evidence that had been mistakenly marked as late by the Residential Tenancy Branch and that belonging to the Landlord.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine each other on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to loss of rent for the breach of this fixed term tenancy?
- Is the Landlord entitled to keep or deduct from the Tenant's security and pet damage deposits?

Background and Evidence

Both parties agreed that this tenancy started on August 1, 2016 for a fixed term which was due to expire on July 31, 2017. Rent under the signed tenancy agreement was payable by the Tenant in the amount of \$3,250.00 on the first day of each month.

The Tenant paid the Landlord a security deposit of \$1,650.00 and a pet damage deposit of \$1,650.00 on July 28, 2016, both of which the Landlord still retains in trust. These monies are herein referred to throughout the rest of this Decision as the "Deposits".

The parties agreed that the Landlord completed a move-in Condition Inspection Report (the "CIR") on July 29, 2017. The tenancy ended when the Tenant provided the Landlord with a written letter on November 30, 2016 informing that the tenancy was prematurely being ended on December 31, 2016 as the Tenant had lost her job. The parties completed a move-out CIR on December 31, 2016.

The Landlord claims \$815.00 from the Tenant for: suite and carpet cleaning; utility usage; and liquidated damages. The Landlord provided a letter into evidence from the Tenant dated January 9, 2017 in which the Tenant provides written consent for the Landlord to deduct the \$815.00 from her Deposits and return the remaining amount of \$2,434.38 forthwith. That letter also provided the Tenant's forwarding address.

During the hearing, the Tenant stated that while she had consented for the Landlord to deduct \$815.00 from her Deposits, the Landlord had failed to pay the utilities portion she had consented to. As a result, the Tenant ended up having to pay it on January 22, 2017. The Landlord confirmed that the Tenant had paid this amount and the parties confirmed that as a result, the agreed upon deduction was thereby reduced to \$695.00.

The Tenant had not given consent to the Landlord to make deductions other than this amount. As a result, the Landlord was applying to recover January 2017 lost rent because the Tenant had breached the fixed term tenancy. The Landlord stated that the rental unit had still not been re-rented and she was also looking for these subsequent costs, even though the Tenant had not been put on notice of this in the Landlord's monetary claim.

The Landlord acknowledged receipt of the Tenant's letter on November 30, 2016 which ended the fixed term tenancy on December 31, 2016. The Landlord testified that she advertised the rental unit from December 1, 2016 onwards on several websites including Craigslist.

The Landlord also testified that she had conducted multiple viewings of the rental unit without success because January 2017 was a slow period of the year. The Landlord confirmed that she had not provided any documentation to support her testimony relating to the re-rental efforts she testified to.

The Tenant disputed the Landlord's oral evidence and denies the Landlord's claim for \$3,250.00. The Tenant stated that the city where the rental unit is located has a 1%

vacancy rate for rentals and that the rental unit is located in a prime location of the city in the Olympic Village. The Tenant stated that she has continually searched all of the websites where rental properties are commonly advertised since giving notice to end the tenancy, including Craigslist, but the rental unit has not been advertised.

The Tenant pointed to an advertisement of the similar rental unit in her evidence and submitted that this shows that the similar rental units are being rented for the same amount she had paid for the tenancy.

Analysis

With respect to the Landlord's claim to keep the Deposits, I find the Landlord filed the Application within the 15 day time limit afforded by Section 38(1) of the Act.

Section 38(4) (a) of the Act provides that a landlord may retain an amount from a Deposit if at the end of the tenancy the tenant agrees in writing. Based on the evidence before me, I find the Landlord was provided written consent by the Tenant on January 9, 2017, and reduced in this hearing, to deduct \$695.00 from the Tenant's Deposits. Therefore, the Landlord may proceed with this deduction and was not required to file an Application for this amount.

Section 45 (2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not** earlier than the date specified in the tenancy agreement as the end of tenancy. In addition, Policy Guideline 30 on fixed term tenancies states that a tenant may not use the one month notice provisions of the Act to end the tenancy prior to the end of the fixed term. Therefore, I find the Tenant breached the tenancy agreement by ending the tenancy prematurely and contrary to the Act.

In determining the relief the Landlord would be entitled to in this case, I turn to Section 7 of the Act and Policy Guideline 5 on mitigation. Section 7(2) of the Act states that a party claiming compensation from the other's noncompliance of the Act must do whatever is reasonable to mitigate the damage or loss being claimed.

Policy Guideline 5 states that in circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Act, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit at a reasonably economic rent following the date that the notice takes legal effect.

The guideline continues to state that efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. An arbitrator may require evidence such as advertising receipts to prove mitigation. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

In this case, I find that the Landlord failed to provide sufficient evidence that she had mitigated or incurred loss for January 2017 rent. The Landlord received written notice from the Tenant on November 30, 2016 and thereby had a duty to start up the process of advertising the rental unit for January 1, 2017 onwards to mitigate any loss for the Tenant's breach of the fixed term tenancy.

The Landlord provided no supporting or corroborating evidence, such as advertisements for re-rental, to support her testimony that she did advertise it from December 1, 2016 onwards. In addition, the Landlord did not provide the advertisement she claimed to have placed on Craigslist in December 2016, which I accept is a common place to advertise a rental unit.

The Landlord also failed to provide supporting evidence of the multiple viewings that had occurred during the month of December 2016. In this respect, I would have found it reasonable to expect that viewings would have generated communication records that could have been provided to verify this testimony.

Furthermore, the Landlord submitted that the rental market was slow in January 2017. However, the Landlord again failed to provide evidence to support this submission. In the absence of such corroborating evidence, I prefer and accept the Tenant's evidence that this rental unit is located in a prime location of a busy city and that there was a high chance of the rental unit being re-rented out in the four weeks prior to January 2017. Therefore, based on the foregoing findings, I deny the Landlord's request for January 2017 rent.

As the Landlord had already been given prior written consent from the Tenant to make authorized deductions and the Landlord has not been successful in the resulting claim, I also deny the Landlord's request to recover the filing fee.

Conclusion

While the Tenant broke the fixed term tenancy, the Landlord has failed to mitigate loss for January 2017 rent. Therefore, the Landlord's claim for this amount and recovery of the filing fee is dismissed without leave to re-apply.

Pursuant to the Tenant's written consent the Landlord may deduct \$695.00 from the Tenant's Deposits and must return the remaining balance of **\$2,555.00** back to the Tenant forthwith. The Tenant is issued with a Monetary Order for this amount which may be enforced through the Small Claims Division of the Provincial Court if the Landlord fails to make the return payment.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 05, 2017

Residential Tenancy Branch