



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 8, 2016 and has provided in his direct testimony the Canada Post Customer Receipt Tracking number as confirmation. The landlord provided direct testimony that the tenant signed in receipt of delivery of this package from Canada Post on December 17, 2016.

Preliminary Issue

During the hearing the landlord clarified that the selection requesting an order of possession was made in error as the tenant had vacated the rental premises on November 30, 2016. As such, this portion of the landlord's application requires no further action.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 6, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 6, 2015. The monthly rent began as \$1,040.00 and ended as \$1,070.00 per month. A security deposit of \$520.00 was paid.

The landlord seeks a monetary claim of \$1,070.00 for the loss of rental income for December 2016. The landlord stated that upon being notified by the tenant on November 14, 2016 the landlord tried to re-rent the unit to a new tenant, but was unable to until February 1, 2017. The landlord stated that the tenant had vacated the rental unit on November 30, 2016 and a condition inspection report for the move-out was completed by both parties on December 1, 2016. The landlord stated that they have many applicants on file, but that no prospective tenant(s) were able to move-in on such a short notice without giving proper notice to end their tenancies.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Residential Tenancy Branch Policy Guideline #5, Duty to Mitigate also states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. 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. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring... Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

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. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

In this case, I accept the undisputed affirmed testimony of the landlord and find that the tenant provided improper notice to end the tenancy on November 14, 2016 for December 1, 2016. I also accept the undisputed affirmed testimony of the landlord that reasonable efforts were made to mitigate any losses by re-renting the premises, but that due to the improper notice of the tenant the unit was not re-rented until February 1, 2017. As such, I find that the landlord has established a claim for the loss of rental income of \$1,070.00.

The landlord having been successful in the application is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$520.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$650.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: June 07, 2017

Residential Tenancy Branch