Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Minichiello Apparel Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on February 23, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to each Respondent, via registered mail, at the service address noted on the Application. The Landlord cited 4 tracking numbers that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to all Respondents in accordance with section 89 of the *Residential Tenancy Act (Act); however* the Respondents did not appear at the hearing.

On February 24, 2017 the Landlord submitted 6 pages of evidence to the Residential Tenancy Branch. The Landlord stated that he does not recall how this evidence was served to the Respondents. I find that the Landlord has failed to establish that this evidence was served to the Respondents in accordance with section 88 of the *Act*, and I refuse to accept it as evidence for these proceedings.

On July 18, 2017 a Respondent submitted 35 pages of evidence to the Residential Tenancy Branch. The Landlord stated that he was not served with this evidence package. I find that the Respondent has failed to establish that this evidence was served to the Landlord in accordance with section 88 of the *Act*, and I refuse to accept it as evidence for these proceedings.

Preliminary Matter #1

The Landlord submitted a tenancy agreement that names the Respondent with the initials “D.M” as the Tenant, with an indication that this individual is doing business as the incorporated company also named as a Respondent. I find that these two parties have been properly named in this Application for Dispute Resolution.

The Landlord stated that he does not have a tenancy agreement with the Respondent with the initials “D.G”. He stated that this party is a business partner of the Tenant with the initials “D.M.”. As there is no evidence that the party with the initials “D.G.” is a party to this tenancy agreement, I find that he should not have been named as a Respondent in this matter. I therefore dismiss the application for a monetary Order naming this Respondent.

The Landlord stated that he named the party with the initials “C.R.” because he believes that may be the new company name of the incorporated company named as a Respondent in this matter. In the absence of any documentary evidence to establish that the party with the initials “C.R.” is doing business as the incorporated company also named as a Respondent, I find that this party should not have been named as a Respondent in this matter. I therefore dismiss the application for a monetary Order naming this Respondent.

Preliminary Matter #2

The tenancy agreement submitted in evidence indicates there is an addendum to the tenancy agreement, although it does not specify the number of pages in the addendum.

The Landlord stated that he outlined the terms of the addendum in handwriting on the back of the last page of the tenancy agreement, although these handwritten notes are not signed by either party. The handwritten notes refer, in part, to the exchange of shares.

The Landlord stated that the term relating to the exchange of shares is outlined in a Subscription Agreement that was submitted as evidence. This agreement is between the Landlord and the incorporated company named as a Respondent. The agreement relates to the purchase of shares in this company in exchange for reduced monthly rent for this tenancy.

The *Act* grants me authority to resolve disputes that arise under this *Act* or a tenancy agreement. The legislation does not confer authority to consider all types of disputes between parties.

I find that when the Landlord entered into this tenancy agreement he also entered into a parallel agreement with the incorporated company named as a Respondent. As this agreement primarily relates to the transfer of shares, rather than the tenancy, I find that I do not have authority to enforce this agreement. I therefore decline to consider the Landlord's application $6,000.00 worth of company shares.

Although the Subscription Agreement makes reference to reducing the rent, I find that does not grant me jurisdiction over this matter as it is not sufficiently related to the tenancy. Rather, I find that the parties have simply agreed on an alternate method of paying for purchasing the company shares.

Issue(s) to be Decided

Is the Landlord entitled to compensation, to compensation for unpaid rent/lost revenue and costs of re-renting the rental unit?
Is the Landlord entitled to the cost of a tailored suit?
Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that he entered into a fixed term tenancy agreement with the Respondent with the initials "D.M", hereinafter referred to as the Tenant. He stated that the tenancy agreement was for a fixed term, the fixed term of which began on July 01, 2016 and ended on July 01, 2017. He stated that the tenancy agreement declared that rent of $3,500.00 was due by the 31st day of each month.

The Landlord submitted a copy of the tenancy agreement, which corroborates this testimony.

The Landlord stated that the Tenant paid a security deposit of $1,750.00 and a pet damage deposit of $500.00.

The Landlord stated that on, or about, October 31, 2016 the Tenant gave him written notice of his intent to end the tenancy on December 01, 2016. He stated that the rental

unit was vacated on December 01, 2016. The Landlord is seeking lost revenue for the month of December, as he was unable to rent the unit for that month.

The Landlord stated that he began advertising the rental unit on a popular website on November 07, 2016 or November 08, 2016. He stated that he was able to re-rent the unit for January to tenants who rented the unit for a fixed term of five months, at a reduced rent of $3,200.00 per month. The agreement required the new tenants to vacate by May 31, 2017. The Landlord is seeking lost revenue for those five months to reflect the reduced rent being paid by the new tenants.

The Landlord stated that the new tenants moved out of the rental unit in May of 2017. He stated that he began advertising the rental unit on a popular website sometime in the middle of May of 2017 and was able to find new tenants for July of 2017. The Landlord is seeking lost revenue for the month of June, as he was unable to rent the unit for that month.

The Landlord stated that he agreed to reduce the rent from $3,500.00 to $3,250.00 because the Tenant agreed to provide him with shares in his company and a tailored suit. He stated that when those items were not provided, he told the Tenant he would have to pay the full rent of $3,500.00. He stated that he believes this is why the Tenant ended the tenancy.

The tenancy agreement submitted in evidence indicates there is an addendum to the tenancy agreement, although it does not specify the number of pages in the addendum. The Landlord stated that he outlined the terms of the addendum in handwriting on the back of the last page of the tenancy agreement, although these handwritten notes are not signed by either party. The handwritten notes refer, in part, to providing a “custom made suit”.

The Landlord stated that he spent approximately 30 hours replacing the Tenant, which included advertising the rental unit, communicating with prospective tenants, and showing the unit. He is seeking compensation of $400.00 for his time.

The Landlord stated that the Tenant provided his forwarding address, in writing, when he served his notice to end tenancy on October 31, 2016.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of $3,500.00

in advance, by the last day of each month. I find that this was a fixed term tenancy that began on July 01, 2016 and was to continue until July 01, 2017.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act,* pursuant to section 67 of the *Act*.

I find that the Tenant must pay $3,500.00 to the Landlord for the loss of revenue that the Landlord experienced in December of 2016 due to the rental unit being vacant during that month.

I find that the Tenant must pay $1,500.00 to the Landlord for the loss of revenue that the Landlord experienced in January, February, March, April, and May of 2017. This reflects the $300.00 difference the Landlord collected from the new tenants and the amount the Landlord would have collected from the Tenant if his tenancy had continued.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the lost revenue he experienced in June of 2017.

In reaching this conclusion I was heavily influenced by the undisputed evidence that the new tenants entered into a fixed term tenancy agreement that ended on May 31, 2017 and the Landlord did not advertise the rental unit until sometime in the middle of May of 2017. As the Landlord knew, on the basis of the terms of the fixed term tenancy agreement, that the new tenants would be vacating the rental unit by May 31, 2017, I find that he should have advertised the rental unit prior to the middle of May. I find that if the unit had been advertised in late April or early May, it is entirely possible that the unit would have been rented for June 01, 2017.

As the Landlord did not properly mitigate his losses for June of 2017, I dismiss his claim for lost revenue for that month.

On the basis of the undisputed evidence I find that the Landlord spent approximately 30 hours finding new tenants. As the Landlord would not have spent this time if the Tenant had not prematurely ended the fixed term tenancy, I find that the Tenant must

compensate the Landlord for his time. The Landlord has claimed compensation for $400.00 for his time and I find that amount to be reasonable, given the time spent.

As the Tenant has not signed or initialed the handwritten terms on the back of the last page of the tenancy agreement, I find that there is insufficient evidence to conclude that he agreed to provide the Landlord with a “custom made suit” as a term of the tenancy agreement. I therefore dismiss the Landlord’s claim of $2,000.00 for the suit.

Even if the Tenant had signed the handwritten term regarding the tailored suit I would dismiss the claim of $2,000.00 for the suit, as the term does not establish the value of the suit.

On the basis of the undisputed evidence I find that this tenancy ended when the rental unit was vacated on December 01, 2016 and that the Tenant provided the Landlord with a forwarding address, in writing, on October 31, 2016.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and he did not file his Application for Dispute Resolution until February 22, 2017 which is more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit and pet damage deposit.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $5,500.00, which includes $5,000.00 in lost revenue, $400.00 for time spent re-renting the unit, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenant is entitled to double the security deposit and pet damage deposit, which is $4,500.00.

After offsetting the two amounts, I find that the Tenant owes the Landlord $1,000.00. Based on these determinations I grant the Landlord a monetary Order for $1,000.00. In the event the Tenant does not voluntarily 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.

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: July 26, 2017

Residential Tenancy Branch