



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD O FF

Introduction

This hearing was convened in response to an application by the landlord on July 13, 2017 under the *Residential Tenancy Act* (the Act) for a monetary order relating to loss of rent revenue, liquidated damages as per the agreement, additional costs, recover the filing fee, and retain the security deposit in partial satisfaction of their monetary claim.

Both parties participated in the hearing with their submissions, document evidence and relevant testimony during the hearing. The parties acknowledged their exchange of evidence and I determined all evidence admissible. The parties were also provided with opportunity to settle their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The rental unit is a 4 bedroom house in an established residential area of Langley, B.C. The *relevant* undisputed evidence in this matter is that the tenancy started as a fixed term tenancy agreement December 01, 2016 with an effective end date of November 30, 2017. I have benefit of a copy of the tenancy agreement. The monthly rent payable under the tenancy agreement was \$2600.00. The tenancy ended earlier than agreed

on June 30, 2017 pursuant a written notice to vacate by the tenant delivered to the landlord May 31, 2017. At the start of the tenancy the landlord collected a security deposit and pet damage deposit in the sum of \$3900.00 which the landlord retains in trust. It is relevant the parties agreed on a *liquidated damages* clause representing a genuine pre-estimate of costs to re-rent the unit in the amount of \$1000.00 if the tenant ended the tenancy earlier than agreed in breach of the agreement. Condition inspections were conducted at the start and end of the tenancy in accordance with the Act and a written forwarding address of the tenant was provided June 29, 2017.

The parties agree the landlord began advertising efforts on Craigslist on June 07, 2017 to re-rent the unit for July 01, 2017. The landlord testified their efforts were restricted to listing the rental unit on Craigslist as the preferred advertising stream of the landlord. When the landlord was queried by the tenant the landlord communicated that in their knowledgeable experience other advertising formats such as newspapers, social media and the landlord's website were not as effective as Craigslist in attracting the target tenant. The landlord testified that going forward the online listing was regularly updated for currency, accuracy and the tenant's suggestions. The landlord testified that eventually the house was re-rented for September 01, 2017 at the same monthly rent of \$2600.00. The landlord's testimony is that the rental unit attracted enquiries and was shown to prospective tenants 8 times during June and July 2017 before no longer necessary in order to attract a suitable renter. The landlord claims the tenant's ending of the tenancy early contrary to the agreement caused the landlord a loss of revenue for July and August 2017. The landlord seeks lost revenue of \$5200.00, the *liquidated damages* of \$1000.00 and miscellaneous expenses associated with re-renting the unit such as photocopies, faxes, mileage and gas in the sum of \$300.00.

The tenant testified they personally met the eventual renter of the house which confirmed to them the house re-rented for September 2017. The tenant argued the landlord did not begin advertising the rental unit until June 07, 2017, nor adequately exploited other advertising platforms in order to secure a new tenant for July 01, 2017. The tenant testified that as a realtor themselves they are of the thinking that if the

landlord had expanded efforts to include other platforms in which to advertise they would have been successful, given their claim that a healthy rental market persisted and the house is in a desirable area. The tenant enquired of the landlord, a rental agent, about newspaper exposure, which in the landlord's consideration was rejected. The tenant also argued the landlord did not use appropriate information in their online listing of the unit, claiming the landlord neglected to identify the local area in which the house is located and they inaccurately referenced the catchment school near the house and notified the landlord of same. The evidence is that to the latter concern of the tenant the landlord responded that in their consideration the target renter, regardless of the information, does their own research. The tenant testified they did what they could to aid the landlord in re-renting the house. The tenant testified that during June 2017 they accommodated 3 of the landlord's showings for prospective renters. The tenants stated several times that to their thinking the landlord's delay of 6 days before advertising the rental unit at the outset in June 2017 prevented an earlier re-rental. Therefore, the tenant disputes the landlord's claim for loss of revenue in its entirety, but accepts the landlord's claim to the \$1000.00 for liquidated damages.

The landlord was informed in the hearing that their claim of \$300.00 for miscellaneous re-renting costs is an addition to costs previously agreed would be capped at the amount for liquidated damages as the costs for re-renting the unit. As a result this portion of their claim would be dismissed.

Analysis

Under the *Act*, the party claiming a loss bears the burden of proof. Moreover, in this matter it must be known that a tenant who signs a fixed-term tenancy agreement, or contract, is responsible for the rent to the end of the term. And, that a landlord who claims for a resulting loss is subject to their statutory duty pursuant to Section 7(2) of the *Act* to do what *is reasonable to minimize the loss*.

The applicant landlord must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Relevant to this matter the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or the tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss in this matter, and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the tenant. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation toward mitigating or lessening the loss incurred.

I find it is undisputed that the landlord's *claim* of revenue losses is rooted in the tenant's violation of the tenancy agreement and is in the amount equivalent to 2 month's rent.

I find that on balance of probabilities it is arguable the landlord would have secured a new tenant for July 01, 2017 if they had begun advertising earlier than June 07, 2017. It is further arguable the landlord would have a new tenant for July 01, 2017 if they had employed a lengthy list of additional formats in which to advertise the rental unit, or the formats espoused by the tenant. Regardless, I find the *Act* does not impose on the

landlord a duty to employ optimal measures to minimize losses, or create maximal exposure of the rental unit in efforts to mitigate losses. The Act states the landlord had a duty to do what was *reasonable*. I find that the landlord's consideration or reasoning for their chosen efforts is not patently *unreasonable*. The tenant's evidence is that the landlord's efforts achieved 3 showings within June 2017, so it cannot be said the landlord's efforts were without merit despite the identified failings of the tenant. I find it believable that for reasons other than location or school catchment an interested viewer may not find the subject rental unit suitable or the landlord may not find the viewer qualified. Generally, I find the landlord's efforts in the month of June 2017 as *reasonable*.

However, what was not *sufficiently* proven by the landlord is the scope of their efforts made after June 2017 toward a rental after July 01, 2017: as example, for mid-July or August 2017. I have not been presented sufficient evidence to support the landlord's claim of an additional 5 showings before success at re-renting the unit.

As a result of all the above, I am satisfied the landlord has sufficiently met the test of Section 7 for loss of rent revenue for the period of July 01 to July 15, 2017. Therefore, I grant the landlord compensation for lost rent revenue for this half month period in the amount of **\$1300.00**. However, in the absence of sufficient evidence of efforts beyond what has been presented in this matter, I find the landlord's quest for compensation for any period beyond mid-July 2017 must fail. Therefore I **dismiss** the remainder of their claim for loss of revenue.

The agreed evidence is that the landlord's claim of *liquidated damages* in the amount of **\$1000.00** is undisputed and therefore I grant the landlord this amount.

The landlord's claim for miscellaneous expenditures of \$300.00 is **dismissed** as it would unjustly enrich the landlord's *liquidated damages*.

As the landlord has been in part successful in their application they are entitled to recover their **\$100.00** filing fee. The tenant's deposits will be off-set from the award made herein. Calculation for Monetary Order is as follows

Landlord loss of revenue July 01 – 15, 2017	\$1300.00
Landlord liquidated damages	\$1000.00
Landlord filing fee for the cost of application	\$100.00
Landlord's award	\$2400.00
<i>Less tenant's deposits held in trust</i>	<i>-\$3900.00</i>
Return to tenant: Monetary Order	(\$1500.00)

Conclusion

I Order that the landlord may retain \$2400.00 of the tenant's deposits in full satisfaction of their claim and must return the balance to the tenant. So as to perfect the Order **I grant** the tenant an Order under Section 67 of the Act for the balance due of **\$1500.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: January 11, 2018

Residential Tenancy Branch