



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 508639 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNR FF

Preliminary Matters

On April 30, 2018, a hearing was held and the Landlord failed to attend the hearing. A decision was rendered. However, on May 2, 2018 the Landlord applied for a review consideration of this decision. In the application for review consideration, the Landlord was asked to explain what happened that was beyond their control or that could not have been anticipated that prevented them from attending the original teleconference hearing. It was determined that the Notice of Hearing generated by the Residential Tenancy Branch contained an incorrect call-in number which was a circumstance beyond the Landlord's control. As such, a new hearing was granted to the Landlord on May 4, 2018, and a new Notice of Hearing was generated and sent to the Landlord on May 8, 2018.

The Tenants stated they were not served in a timely manner, and did not receive the Notice of Hearing until May 30 or 31, 2018, but the Tenants did not object to the hearing proceeding. The Landlord stated that they were away on vacation and they could not serve the Tenants until they returned. Although the Landlords did not serve the Tenants with the new Notice of Hearing, within 3 days, as they should have, I note the Tenants called into the branch on May 10, and May 22, 2018, and were told about the details of the hearing. Further, I note both parties have already submitted evidence with respect to the claim before me, and all of that was provided prior to the previous hearing on April 30, 2018, when the Landlord was unable to attend through no fault of their own. In any event, I find the Landlord's failure to serve the Tenants with the new Notice of Hearing within 3 days does not prejudice the Tenants, as the issues remain the same as the previous hearing, and both parties had already submitted their evidence.

Introduction

This hearing was held, by teleconference, on June 13, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for damage or loss under the Act;
- a monetary order for unpaid rent or utilities; and,
- to recover the cost of the filing fee.

The Landlords and the Tenants both attended the hearing and provided testimony. Both parties confirmed receipt of each other’s documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to compensation for unpaid rent or utilities?

Background and Evidence

Both parties agree that the Tenants were under a fixed term tenancy agreement starting in October 1, 2016, and ending in September 30, 2017. The Tenancy Agreement was provided into evidence and it lists rent as \$1,890.00 per month. Both parties agreed that the Tenants vacated the rental unit at the end of February 2017.

In the hearing the Landlords stated that they are seeking compensation because the Tenants broke the lease early, and they were unable to re-rent the unit until June 1, 2017, and when they re-rented it, it was at a reduced rate. The Landlords are looking to recover the difference between what would have been paid by the Tenant’s under their lease versus what they ended up being able to rent the unit for (until the expiry of the Tenant’s 1 year lease agreement). In summary, the Landlords are looking for the following compensation:

1. \$5,670 (\$1,890.00 x 3 months) for lost rent for March, April and May 2017

2. \$600.00 (\$150.00 x 4 months) because they had to reduce rent by \$150.00 in order to attract new tenants. The Landlords are looking to recover this \$150.00 monthly loss up until the end of the fixed term tenancy agreement (for the months of June, July, August, September of 2017)
3. \$100.00 for the filing fee

The Landlords stated that they got an email from the Tenants on January 5, 2017, indicating that they wanted to break the lease, and that they would be vacating the rental unit by the end of February 2017. The Landlords stated that they advertised the rental until on January 8, 2017, at an increased rental rate of \$2,100.00. The Tenants stated that they noticed the ad was posted for higher than what their rent was set at and they asked the Landlord to reduce the amount in order to help attract renters in a timely manner and to mitigate the potential loss. The Landlords stated that they changed the amount on the rental ad to the same as what it was for the Tenants (\$1,890.00) on January 20, 2017.

The Landlords stated that they had over 25 showings over approximately 4 months. The Landlord stated that they continued to repost the ad at regular intervals to keep the interest going. The Landlords stated that they had 5 showings in January, 1 showing in February, 6 in March, 9 in April, and 4 in May. The Landlord stated that they signed a new Tenant on May 6, 2017, at a reduced rate (\$150.00 less taking into account the utility setup), and that tenancy began on June 1, 2017.

The Landlord stated that they initially posted the ad for \$2,100.00 on January 8, 2017, then reduced the amount to \$1,890.00 on January 20, 2017, then reduced again to \$1,830.00 on February 27, 2017, and again reduced the rent to \$1,800.00 on March 17, 2017. Finally, the Landlord lowered the rent in the ad to \$1,680.00 on April 3, 2017. The Landlord stated that they diligently tried to show the unit to many people and there was a lack of interest. The Landlord noted that there was a fair amount of snow in January/February of 2017 and that there wasn't much activity.

The Tenants stated that they feel the Landlords have not sufficiently mitigated their loss, nor have they done adequate due diligence in re-renting the unit. The Tenants stated that the Landlord should have had no difficulty in re-renting the unit with such a low vacancy. The Tenants stated that they cooperated with all viewings and even attempted to post an ad for the suite to help the Landlords. However, the Tenants were told not to, and so they took the ad down. The Tenants stated that by posting the suite at an increased rent for the first 12 days, it could have pushed away and tainted any interest in the unit. The Tenants feel they did everything they could to minimize the loss but they

do not feel that the Landlords did the same. The Tenants feel the Landlord should have posted the ad on more than just Craigslist, and should have had an open house to get more people into the unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on the evidence before me, I find the Tenants were in a fixed term tenancy agreement from October 1, 2016, and ending in September 30, 2017. The Tenancy Agreement was provided into evidence and it lists rent as \$1,890.00 per month. The Tenants gave notice to the Landlord around January 5, 2017, indicating they would vacate the unit by the end of February 2017. I turn to section 45 of the *Act*:

Tenant's notice

- 45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy**, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the Tenants breached section 45 of the *Act* by ending the Tenancy prior to the end of the fixed term. As such, I find the Landlord is entitled to some compensation. I note the following relevant portions of the:

Policy Guideline #5 – Duty to Minimize Loss

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 loss. 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.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonable economic rent.

[...]

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim

In making my determinations on this matter, and in deciding what amount of compensation the Landlords are entitled to, I have considered what steps they took to minimize their potential loss. Although I note the Landlord quickly reposted the ad for the rental unit after finding out the Tenants wanted to leave, I am mindful that they attempted to get more money for the unit, and they posted the ad for \$2,100.00, which was notably higher than what the Tenants rented it for, \$1,890.00. I find it more likely than not that this had a negative impact on re-renting the unit, and I find it more likely than not that this could have deterred some potential renters.

Although I find the Landlords failed to mitigate in some ways, I also note they were actively reposting the ad, in some cases on a weekly basis, were gradually decreasing rent over a period of months, and showing the unit to prospective tenants regularly. This shows the Landlord was trying to re-rent the unit, and was taking some steps to mitigate the loss.

However, despite some efforts to minimize their rental loss, I find the Landlord failed to reasonably mitigate their loss with respect to the initial pricing of the unit when it reposted, as stated above, and potentially contributed to their inability to find a replacement tenant in a timely manner. As a result of this, I find the Landlords are not entitled to the full amount they are asking for.

The Landlord is looking to recover 3 months' rent (March through May). However, I am not satisfied it was reasonable for the Landlord to raise rent, and attempt to make more money while, simultaneously trying to keep the loss as low as possible, and find renters in a timely manner. In consideration of all of the above, I award the Landlord a reduced amount of 2 out of 3 months they are claiming for (2 x \$1,890.00 rather than 3 x \$1,890.00). I find the Tenants owe \$3,780.00 for this portion of the claim.

I turn to the next portion of the Landlords' claim, which is to recover the differential in rent for June, July, August, and September of 2017 (the end of the original fixed term tenancy.) I note the Tenants vacated the unit before March 1, 2017. The Landlords were able to re-rent the unit for June 1, 2017, at a rate which was \$150.00 less than what the Tenants were paying under their lease. The Tenants lease expired at the end of September 2017, and the Landlords are looking to recover the \$150.00 per month (\$150.00 x 4) because they had to lower the rent in order to re-rent the unit after the Tenants broke their lease. Since the Tenants breached their fixed term tenancy agreement, and section 45(2) of the Act I find the Tenants are also responsible for the loss the Landlords incurred as a result of having to re-rent the unit at a lower rate than they would have received had the Tenants honored the lease agreement. I find the Landlords are entitled to recover \$600.00 for this portion of their claim.

Since the Landlords were substantially successful in this application, I award them the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act.

In summary, I award the Landlord a monetary order as follows:

Claim	Amount
Lost rent	\$3,780.00
Rent differential for remaining 4 months of the lease agreement	\$600.00
Filing Fee	\$100.00
TOTAL:	\$4,480.00

Conclusion

I set aside the decision issued at the previous hearing held on April 30, 2018.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,480.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 13, 2018

Residential Tenancy Branch