



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDCL-S, FFL

Introduction

This decision pertains to the Landlords' application for dispute resolution made on May 14, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlords seek a monetary order for compensation for loss of rent, and seek to apply the Tenants' security deposit in full or partial satisfaction of that claim, if successful.

The Tenants and the Landlord ("S.C.") attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord had a witness available to be summoned into the hearing, but after the parties testified, and after I discussed with the Landlord about the value and relevance of the witness' testimony as it would likely relate to the Landlord's application, the Landlord chose not to call the witness.

The parties did not raise any issues with respect to service of the Notice of Dispute Resolution Proceeding or documentary evidence submitted by the parties.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application is considered in my decision.

Issue

Are the Landlords entitled to a monetary order for compensation for loss of rent?

Background and Evidence

The Landlord testified that the Tenants, and a third tenant not a party to this application, entered into a one-year fixed term tenancy from September 1, 2017 to August 31, 2018. Monthly rent was \$2,725.00. The Tenants paid a security deposit of \$1,350.00. All three tenants were on one tenancy agreement. A copy of the written tenancy agreement was submitted into evidence.

The Tenants and the third tenant decided, for various reasons, to move out in October 2017, and each sublet their “portion” of the rental unit, with the Landlords’ permission. The third tenant found a subtenant that entered into a sublet agreement whereby they would live in the rental unit until August 31, 2018, and agreed to pay the third tenant’s portion of the rent. The Tenants found two new subtenants, but those subtenants were only able to stay until the end of April 2018, and the Tenants could not find new subtenants for May 1 to August 31, 2018 at the per-Tenant rent of \$900.00.

(I note that the tenancy agreement sets monthly rent at \$2,725.00, which, divided by 3 is \$908.33, though the parties testified that the rental unit was being advertised at a rate of \$900.00.)

On May 7, 2018, the Landlord received a notice to end the tenancy from the Tenants. The notice was dated May 1, 2018, but did not state the effective date of the notice. I asked the Tenants what effective date they had intended when giving the notice, that is, when they had intended for the tenancy to terminate. The Tenants testified that they intended for the notice to be effective May 1, 2018.

The Landlord purchased an online advertisement to find new subtenants, but was unable to find new subtenants at the \$900.00 rate as advertised. Eventually, the Landlords found one subtenant who agreed to pay rent of \$700.00, and, a second subtenant who agreed to pay rent of \$650.00. The difference in rent for May to August 2018, inclusive, from what the Tenants were paying and what the new subtenants are paying is \$475.00 per month, for a four-month total of \$1,900.00.

The Landlords claim for costs related to the paid advertisement, travel (i.e., mileage), and meals. The Landlord did not submit into evidence copies of any receipts for the advertising or for the meals. Nor did the Landlord provide any evidence or make any submissions explaining the basis on which mileage costs were calculated.

The Tenants did not dispute the Landlord’s description of the overall tenancy and sublet

situation. They testified that they made concerted efforts to find new sublet tenants by advertising on Kijiji and on Facebook. They testified that they passed along to the Landlord information about prospective new subtenants. They advertised their respective portions of the tenancy at a monthly rent of \$900.00. Ultimately, the Landlords found new subtenants who effectively “took over” the Tenants’ portions of the tenancy, but at the lower rates referred to above.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlords seek a monetary order for compensation for loss of rent and for miscellaneous expenses. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation. In determining whether compensation is due, I must determine whether:

1. a party to the tenancy agreement failed to comply with the Act, regulation, or tenancy agreement;
2. loss or damage resulted from their non-compliance;
3. the party who suffered the damage or loss can prove the amount or value of the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably in minimizing their damage or loss.

I now address each part of the above-noted 4-part test.

1. Did the Tenants fail to comply with the Act, regulation, or tenancy agreement?

The Tenants signed a fixed term tenancy agreement. They breached the agreement when they ended the tenancy on May 1, 2018.

2. Did the loss claimed result from the Tenants’ non-compliance with the Act and the tenancy agreement?

But for the Tenants terminating their tenancy agreement, the Landlords would not have

sustained a loss, and potential loss, in rent from May to July 2018.

I note that as August 2018 had not yet passed as of the date of this hearing, I am unable to grant compensation for future losses, and that part of the Landlord's application is premature.

3. Have the Landlords proven the amount or value of the loss?

The Landlord's undisputed evidence establishes that they have lost, and anticipate losing, rent in the amount of \$1,900.00 for May 1 to August 31, 2018. Subtracting future loss of rent for August—which, as I have previously noted cannot be considered—the lost rent is \$1,425.00.

The Landlord also submitted a Monetary Worksheet for costs related to internet advertising, mileage costs, and for meals. However, as he did not submit any receipts for these costs I will not consider them, and I dismiss those specific amounts claimed.

3. Have the Landlords acted reasonably in minimizing their loss?

The Landlord testified that he acted reasonably in minimizing his loss by taking out an internet advertisement on Castanet. However, I did not hear from the Landlord regarding what other methods of advertising he may have done to rent out the rental unit to new tenants. No evidence regarding the response rate from any such advertisements was submitted, and as such I have no way to determine the entirety of the Landlord's efforts to find new tenants. The evidence before me is that he took out one advertisement.

The Landlord also testified that his target renter market is university students, which is why he structures the tenancy to run September 1 to August 31 on an annual basis. He noted that there is much less demand entering the summer months for student renters. What I find rather incongruous is that the Landlord chose to set up a fixed term tenancy for 12 months, when the duration of a standard academic year runs for 8 months. There is not an insignificant risk of renting to students that they will not be there for the full 12 months. Nor, as is the case here, that there will be as much demand for rental units into the spring and summer.

Further, the Landlord was putting up for rent a rental unit that already had one individual living in it. It is much less enticing to potential renters when they have to move into a rental unit already occupied, versus moving into an empty rental unit. The Landlord has

fundamentally changed the nature of the rental unit, and thus is it not reasonable to assume or expect that two new tenants moving into a residential property occupied by a third person is the same as having three new tenants move into an empty place.

Given the above, I do not find that the Landlords have acted entirely reasonable in minimizing their loss and as such I reduce their claim by 50%.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim regarding a loss of rent, with a reduction on the amount claimed for the reasons set out above.

I decline to order a monetary award for the Landlords' recovery of the filing fee.

Conclusion

The Landlord is granted a monetary award in the amount of \$712.50. The Landlord may retain \$712.50 of the Tenants' security deposit in full satisfaction of this claim.

I grant the Tenants a monetary order in the amount of \$634.50. This order must be served on the Landlords and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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

Dated: July 12, 2018

Residential Tenancy Branch