



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNR FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 11:22 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

The landlord testified that in the beginning of February 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenants by courier. The landlord testified that the hearing was originally scheduled for August 31, 2017 at 11:00 a.m. The hearing was however rescheduled to today's date by the Residential Tenancy Branch (RTB). The landlord testified that the tenant N.O. was aware of the original hearing date as the tenant e-mailed him to advise that they called into the hearing but were on hold and the only participants in the hearing. The landlord advised the tenant N.O. that the RTB had rescheduled the hearing to today's date at 11:00 a.m. The landlord testified that he also sent the tenant N.O. an e-mail with the rescheduled Notice of Hearing. The file audit notes indicate that a new Notice of Hearing was also mailed to the tenants by the RTB on August 23, 2018. The tenant N.O. also called into the RTB office on August 31, 2018 requesting a copy of the Notice of Hearing a copy of which was e-mailed to him on this same day.

Based on the above evidence, I am satisfied that the tenants were served and aware of the Application for Dispute Resolution and both the original and rescheduled hearing dates and times. The hearing proceeded in the absence of the tenants.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on September 1, 2017 and was for a fixed term of one year expiring on August 31, 2018. The monthly rent was \$3180.00. The rental unit is a two bedroom townhouse located at the University of British Columbia (UBC). The landlord testified that the tenants were moving from another country and did not have any proof of income so the landlord required the tenants to pay the first months' rent plus the last two months' rent as security at the time of entering into the agreement.

By way of an e-mail dated October 31, 2017, the tenants advised the landlord that they could no longer continue the tenancy due to financial reasons. The tenants did not provide an effective date of the notice to end tenancy but stated they would try to find alternative accommodation as soon as possible and try to be out by the end of November 2017. The tenants vacated the rental unit on December 9, 2017.

The landlord is claiming he was not able to re-rent the rental unit January 29, 2018 for a tenancy start date of March 1, 2018. The landlord testified that the new tenancy was for \$2750.00 per month and for a fixed term of one year. The landlord submitted a copy of the new tenancy agreement as evidence.

The landlord is also claiming loss of rent for the full month of February 2018 in the amount of \$3180.00 plus the difference in rent of \$430.00 per month for the six month period from March 1, 2018 to August 31, 2018. The landlord testified that after taking the two month's security into account, the tenants had paid rent up in full up to the end of January 31, 2018. The landlord was also claiming listing fees but in the hearing, the landlord withdrew this claim.

The landlord testified that the suite was advertised for rent as early as December 15, 2017 after he painted and cleaned the unit. He subsequently reduced the rent every couple weeks as he was not successful in securing new tenants. The landlord testified

that it is difficult to find new tenants at UBC in the middle of the school year in December which is why he was not able to get the same rent as before.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

I find the tenants breached the agreement by ending the tenancy earlier than the end of the fixed term. The tenants vacated the rental unit on December 9, 2017 and there is insufficient evidence that the tenants provided the landlord with a firm date of when they would vacate so the landlord could begin advertising the rental unit.

I accept the landlord's testimony and find the landlord attempted to mitigate losses by re-renting the rental unit as soon as possible but was not successful in securing new tenants until January 29, 2018 for a move-in date of March 1, 2018. I accept the landlord's testimony and evidence that the new agreement was for a reduced rate of \$430.00 per month.

After taking into account the pre-paid rent and security deposit, I find the landlord suffered a loss of rent for the month of February 2018 as well as a loss of \$2580.00 which is the difference in rent in the amount of \$430.00 per month for a six month period. I accept the landlords claim for unpaid rent in the amount of \$5760.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5860.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5860.00. Should the tenants fail to comply with this Order, this 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: September 04, 2018

Residential Tenancy Branch