Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlord: MNRL-S, FFL
For the Tenant: MNSD, FFT

Introduction

This decision is in respect of the landlord's and tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on July 17, 2018, and November 23, 2018, respectively.

The landlord seeks compensation under section 67 of the Act for lost rent, and compensation under section 72(1) of the Act for recovery of the filing fee. She currently retains the tenant's security and pet damage deposits.

The tenant seeks compensation under section 38 of the Act for the return of his security and pet damage deposits, and compensation under section 72(1) of the Act for recovery of the filing fee.

A dispute resolution hearing was convened on December 20, 2018 and the landlord and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of documents or notices.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues

1. Is the landlord entitled to compensation for lost rent?
2. Is the landlord entitled to compensation for recovery of the filing fee?

3. Is the tenant entitled to compensation for the full or partial return of his security and pet damage deposits?
4. Is the tenant entitled to compensation for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on July 1, 2018 and was to end on June 30, 2019, although it ended much earlier. The tenant paid a security deposit of $1,750.00 and a pet damage deposit of $1,750.00. A copy of the written tenancy agreement was submitted into evidence.

The timeline of events, as described by the landlord, were as follows:

On May 30, 2018, the tenant responded to the landlord's advertisement for the rental unit on Craigslist, indicating his interest in viewing the rental unit. The tenant said that he would like to look at the rental unit the next day, and that he was interested in renting the place starting July 1, 2018.

On May 31, the landlord received the tenant's application and, while somewhat concerned about the income information (it was "not high") of the tenant, did not dismiss the application.

On June 9, the tenant contacted the landlord to indicate his continued interest in the rental unit, but the landlord told him about her concerns with the income. However, the tenant told the landlord that the tenant's mother would be moving in with him, which allayed the landlord's concerns about the income.

On June 14, the tenant advised the landlord that while he was unable to view the rental unit, his mother could do so. The tenant's mother ended up viewing the rental unit, and according to the landlord, the mother liked. She called the landlord at least two or three indicated her interest for the rental unit. Either the mother or the tenant (it was unclear from the landlord's testimony) advised the landlord that they would take the place.

Shortly after, the parties texted each other regarding when and where they should meet to sign the tenancy agreement. On June 20, the landlord's husband met the tenant in downtown Vancouver and the parties signed the tenancy agreement.

The landlord testified that she was in the process of turning the rental unit into a legal suite and work was being done on the unit, and that she had permits in place for the work.

(I note that the landlord's call was dropped from the teleconference hearing at approximately 1:42 P.M., and she returned to the hearing at 1:48 P.M. The landlord did not know why the call was dropped and I speculate that perhaps it was due to the massive power outages across the Lower Mainland.)

The parties met on June 29 and the keys were handed over, along with a copy of the tenancy agreement. Shortly after this date, the tenant texted the landlord regarding a few concerns that he had, specifically about plumbing and electrical. He had raised concerns over the work being done and the permits; the landlord testified that she obtained permits to ensure that the plumbing and electrical work was done safely. The tenant did not think it was safe, and he said that he did not think that the rental unit was worth the price.

The tenant never moved any of his belongings into the rental unit, and the issue remained unresolved. Ultimately, the tenant did not take possession of the rental unit and the landlord ended up looking for new tenants. She eventually secured a new tenant or tenants a few weeks later, who moved into the rental unit on September 1, 2018. The landlord's claim is for the lost rent for July and August 2018.

The tenant testified that while he wanted to meet the landlord to view the rental unit and sign the tenancy agreement, the landlord was "unwilling to meet." He explained that, based on viewing the advertisement, it looked suitable, and met the criteria that he was looking for in a rental unit. He ended up meeting the landlord in downtown Vancouver because the landlord did not want to meet elsewhere; the meeting location appeared to be convenient to both parties.

The tenant then testified that while he tried to view the rental unit before he moved in, the landlord was again unwilling to meet for never-explained reasons. The keys were to be left at the rental unit, and then he eventually arrived at the house to immediately observed some minor things, things that did not match the advertisement. He took notice of, and issue with, the permits regarding the work being undertaken. (The landlord interjected that the permits were "not the tenant's business.") He expressed his dissatisfaction with the place to the landlord, who replied that if he did not like the rental unit that he should return the keys, so she can find someone else.

The tenant testified that the advertisement indicated that it was a two-bedroom rental unit, though it turned out to be a one-bedroom rental unit. Apparently, the second bedroom was accessible through a locked door. The tenant argued that the landlord falsely advertised the rental unit. The tenant submitted into evidence a copy of the advertisement. He also noted that one of the photographs does not actually depict the rental unit that is the subject of this dispute.

He returned the keys on Saturday, June 30, and sent an email to the landlord on July 1, 2018, and then a registered letter on July 4, 2018, with his forwarding address for the purpose of returning the security and pet damage deposits. The tenant further reiterated in his submission that the rental unit was certainly not worth the $3,500.00 that the landlord was asking for it.

In rebuttal, the landlord pointed out that the tenant's mother viewed the rental unit and took pictures and expressed enthusiasm for the place. The landlord then commented that "I wouldn't want to sign the agreement" based on not having seen the place first.

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.

In this case, the landlord seeks compensation in the amount of two months' rent of $7,000.00 (plus the filing fee), while the tenant seeks compensation in the amount of $3,500.00 (plus the filing fee) which represents his security and pet damage deposits.

Section 7 of the Act states that 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. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenant had entered into a tenancy agreement with the landlord. He signed the agreement and provided a security and pet damage deposit to the landlord. In other words, a tenancy agreement was brought into existence on June 20, 2018 for a tenancy that commenced July 1, 2018. The tenancy was a fixed term tenancy ending June 30, 2019.

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.

In this case, the tenant failed to give notice to end the tenancy as required by the Act, and in doing so breached the Act. But for the tenant's breach of the Act, the landlord would not have suffered a loss of rent. Further, I find that the landlord has established, by way of oral and documentary evidence, that the loss of rent amounts to $7,000.00, or, two months' worth of rent.

I turn now to the tenant's submissions regarding the purported false advertising and the work permits, and that it was for these primary reasons that he ended the tenancy. A tenancy agreement is a contract, and as with any contract, each party has a legal obligation to perform due diligence when entering into a tenancy agreement. This is, of course, the legal doctrine known as *caveat emptor,* or, "buyer beware." The extent and

type of due diligence will vary depending upon the circumstances, but a reasonable person who is seeking to rent a rental unit for thousands of dollars a month ought to, at a minimum, visually inspect the potential rental unit. Not only to ensure that it meets one's needs as a tenant, but to also ensure that there are no obvious issues with the rental unit, and it goes without saying, to confirm that what the landlord is offering to rent is what was advertised as such. To not exercise a basic level of due diligence in viewing a rental unit before signing a tenancy agreement is fraught with risk.

Moreover, a diligent tenant who observes a discrepancy between what the landlord's advertisement portrays and what he or she sees upon visiting the rental unit may give rise to further inquiries by the tenant. I make no finding as to whether the landlord falsely advertised the rental unit. As the parties both stated at one point during their respective testimonies, whether the rental unit was a two-bedroom, or a three-bedroom suite was a "matter of interpretation." A physical inspection of the rental unit by the tenant would have quickly lade bare that the parties' interpretations on this critical factor were rather at odds. And, for that matter, whether the rental unit was "worth the rent."

Indeed, if a landlord is unwilling to show a rental unit to a prospective tenant, but nevertheless seeks the prospective tenant's signature on a tenancy agreement, then a reasonable person ought to beware of that landlord. Something is clearly not right. And, though I can understand the tenant's feeling pressured in finding and securing a new home for himself, and his two boys, before their move from Alberta, the responsibility nevertheless lay with the tenant in exercising due diligence before entering into a contract.

As an aside, I note that it is rather unfortunate that the tenant's mother and the tenant failed to discuss the potential issues although, to be fair, perhaps his mother was not on the same page as to what the tenant was looking for in a rental unit.

Turning now to the matter of whether the landlord mitigated her losses in respect of the loss of rent, I note that the landlord did not find new tenants until a few weeks into the month of July, and that those tenants would not move into the rental unit until September 1, 2018.

What is lacking in the landlord's case is any documentary evidence as to when the advertisement went up, nor any documentary evidence showing how many prospective tenants viewed the place, or how many prospective (and suitable) tenants would have been prepared to rent the rental unit effective August 1, 2018. That having been said,

the tenant did not raise any issue with, or dispute, the landlord's testimony and submissions as it pertained to her efforts at finding a new tenant as soon as possible. It does not appear that the landlord waited for an unreasonable time to find a new tenant, and, I note that she attempted to rent the rental unit for the same amount of rent. For these reasons I find that the landlord did whatever was reasonable in the circumstances to minimize her losses.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has established all four criteria of the four-part test for compensation and has therefore met the onus of proving her claim for compensation for $7,000.00.

Given the above, I grant the landlord a monetary award of $7,000.00 for lost rent, and an additional monetary award of $100.00 for recovery of the filing fee, for a total award of $7,100.00. I order that the landlord may retain the full amount of the security and pet damage deposits in the amount of $3,500.00 in partial satisfaction of the award. A monetary order in the amount of $3,600.00 is granted to the landlord for the balance.

Accordingly, having found that the landlord is entitled to the compensation sought, I dismiss the tenant's application without leave to reapply.

Conclusion

I grant the landlord a monetary order in the amount of $3,600.00, which must be served on the tenant. The order 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 section 9.1(1) of the Act.

Dated: December 21, 2018

Residential Tenancy Branch