Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 33 minutes. The landlord's two agents, landlord BB ("landlord") and "landlord VF," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both landlord agents are authorized representatives of the landlord company named in this application.

The landlord stated that the tenant was served with the landlord's application for dispute resolution and notice of hearing on September 28, 2018, by way of registered mail to the tenant's forwarding address provided by the tenant in a letter, dated September 13, 2018. The landlord provided a Canada Post receipt and tracking number with this application. The Canada Post website indicates that the package was delivered and signed for on October 5, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and notice of hearing on October 3, 2018, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's written evidence package on January 9, 2019, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with this application. The Canada Post website indicates that the package was not picked up and a final notice for pick-up was given on January 14, 2019 but no further details beyond that date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on January 14, 2019, five days after its registered mailing. I notified the landlord that I could not consider this written evidence at the hearing or in my decision because it was deemed received late, less than 14 days prior to this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord said that he forgot to gather and send this evidence earlier, which I do not find to be a valid explanation to consider the evidence, given the late service.

The landlord initially indicated that he applied for $3,900.90 for rental loss because he offset the remainder of the tenant's security deposit against this amount, after taking into account cleaning and repairs of $900.90. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's claim to include the full amount of $4,000.00, as I see no prejudice to the tenant, since he had notice in the landlord's application that the landlord was applying for two full months of rent and offsetting the security deposit against it.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to testimony of the landlord and landlord VF, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on July 1, 2018 and ended on September 10, 2018. Monthly rent in the amount of

$2,000.00 was payable on the first day of each month. A security deposit of $1,000.00 was paid by the tenant and the landlord continues to retain the deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. A forwarding address was provided by the tenant to the landlord by way of a letter, dated September 13, 2018, which was received by the landlord on September 14, 2018. The landlord did not have any written permission to keep any part of the tenant's security deposit. The landlord filed this application to keep the security deposit on September 27, 2018.

The landlord seeks a monetary order of $4,900.90 plus the $100.00 application filing fee.

The landlord seeks $4,000.00 for a loss of rent for two months, September and October 2018. He claimed that the unit has still not been rented. He said that the tenant did not provide notice that he was vacating on September 10, 2018. Landlord VF stated that she emailed the tenant on September 5 asking for the rent for September and the tenant responded on September 6 that he was not going to pay rent and he had moved out. Landlord VF stated that she emailed the tenant back on September 6, asking him to complete a move-out condition inspection on September 10, and the landlord posted an RTB form for the tenant to meet them for a move-out condition inspection on September 10. The landlord testified that the tenant met for a move-out condition inspection on September 10, 2018, and signed the report but did not agree with its contents or any deductions from his security deposit.

The landlord said that he advertised the unit for re-rental on September 12, 2018, even though he claimed that repairs to the unit were likely being done on September 20, 2018. The landlord claimed that even though the rental market was positive, he was unable to find tenants because the price of the unit remained the same at $2,000.00, when other units were having difficulty renting for a higher price. He explained that the price was reduced to $1,850.00 in December 2018 and $1,750.00 in January 2019, after the landlord realized the place still had not rented. He claimed that he received 17 applications from prospective tenants but not all were worthy, the size of families had to be smaller because of the septic tank at the property, there was a lean in the kitchen of the house, and the owner of the unit was very picky and wanted good references.

The landlord seeks $900.90 for cleaning and repairs to the unit. He claimed that one person completed all of the following repairs for one amount. He said that the unit was repainted within one month prior to the tenant moving in on July 1, 2018. He claimed that the tenant painted a rectangle on the wall for his projection screen so it had to be

repainted. He explained that the tenant "snuck" a cat in his rental unit, that caused damage to the carpet on the stairs. He stated that junk removal had to be done because the tenant left a couch inside the unit. He said that the tenant kicked a part of the deck in because he was having a fight with his girlfriend about the cat, so it had to be fixed.

Analysis

Rental Loss

As per section 45(1) of the *Act*, the tenant is required to provide at least one month's written notice prior to ending his tenancy when it is a month-to-month tenancy. I find that the tenant vacated the unit without providing the required one month's notice, as the landlord only received an email on September 6, 2018, indicating that the tenant had already moved out. The tenant then completed a move-out inspection on September 10, 2018.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I award the landlord $2,000.00 for September 2018 rent. The tenant occupied the unit from September 1 to 10, 2018. I find that September 11 to 30, 2018, is a reasonable period of time for the landlord to find a tenant and re-rent the unit, given that the landlord said he advertised the unit on September 12, 2018 and received 17 applications from prospective tenants.

I dismiss the remainder of the landlord's application for a loss of rent of $2,000.00 for October 2018. I find that the landlord failed to its mitigate losses in efforts to re-rent the unit to prospective tenants. The landlord failed to provide advertisements for re-renting the unit, as well as copies of any emails or notes regarding showings of the unit to prospective tenants. He was referencing these documents during the hearing. I find that other factors, such as the high rental price in the advertisement not being reduced in time, the house having a lean in the kitchen, the restriction of family size due to the septic tank, and the owner being pickier despite having 17 applications, may have impacted the landlord's ability to re-rent the unit, which is out of the tenant's control and for which I find that the tenant is not responsible.

Other Losses

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim of $900.90 for cleaning and repair costs. The landlord failed to provide a receipt to show that the landlord paid this amount as claimed. During the hearing, the landlord looked up the date of October 4, 2018 and the amount paid, and was able to locate a document that was not provided for this hearing. The landlord had ample time to provide this receipt. I find that the landlord failed part 3 of the above test. The landlord was also unaware of the date that the repairs were performed, indicating the wrong date was included on the invoice of August 20, 2018, which was when the tenant was still living in the rental unit, so the landlord stated it must have been September 20, 2018, because he said the work was done right away.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of $1,000.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's entire security deposit of $1,000.00 in partial satisfaction of the monetary award. I issue a monetary order for the balance of the landlord's award in the amount of $1,000.00.

Conclusion

I order the landlord to retain the tenant's entire security deposit of $1,000.00.

I issue a monetary order in the landlord's favour in the amount of $1,000.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the

tenant 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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 25, 2019

Residential Tenancy Branch