Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on September 5, 2018. The landlord seeks compensation under sections 67 and 72(1) of the Act for various items that are described in greater detail below.

A dispute resolution hearing was convened on January 10, 2019 and the landlord and the tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise issues of service.

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

Issues to be Decided

1. Is the landlord entitled to compensation for various matters related to the tenancy?
2. Is the landlord entitled to compensation for the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced (with the tenant S.M.) on June 1, 2017, and that a new tenancy agreement went into effect on June 1, 2018 when tenant P.M. became a co-tenant. The tenancy ended on September 1, 2018, with the Condition Inspection Report being completed and keys handed over on September 2, 2018. Monthly rent was $1,820.00 and the tenant S.M. paid a security deposit of $875.00, which was carried over to the tenancy that commenced in 2018. The tenancy was for a fixed term which was supposed to end May 31, 2019. A copy of the written tenancy agreement was submitted into evidence.

On July 21, 2018, the tenants advised the landlord by email that they would have to end their tenancy early (as a result of the tenant's job loss) and vacate on or about September 1, 2018. The landlord placed a Castanet advertisement for the rental unit on

July 25, 2018, in which she indicated that the rental unit would be available September 15, 2018. The ad, which cost $42.00, was good for thirty days. The landlord submitted a copy of the receipt for the advertisement. Ultimately, after receiving about 30 potential respondents to the ad, and after vetting the applicants, signed a new tenancy with a new tenant on August 21 for a tenancy to commence September 15, 2018.

While the landlord initially listed the rental unit at a monthly rent of $1,950.00 (which resulted in the high number of interested applicants), the current rent is $1,850.00. The landlord explained that the rent being increased to $1,950.00 did not have a noticeable effect on the number of interested applicants.

As a result of the tenants' breaking of the fixed term tenancy the landlord claims a loss equal to half a month's rent in the amount of $910.00. In addition, the landlord claims $7.32 for Fortis Gas, $41.46 for Fortis Electric, and $138.00 for carpet cleaning costs. Receipts for these claims were submitted into evidence by the landlord.

The tenants did not dispute the claim for carpet cleaning or for the Fortis amounts. However, the tenants disputed the necessity of taking out a paid advertisement when the landlord could have taken out a free advertisement instead. A paid ad, according to the tenant, simply highlights the ad in yellow and places it near or at the top of the listings online.

They further argued that the landlord did not make a reasonable attempt to rent the rental unit for the first of September. And, that by advertising the rental unit at a higher rent that what they were paying does not go to mitigate the landlord's losses for rent.

Tenant P.M. submitted that they told the landlord on July 1 they would be moving out on September 1, 2018—"that never changed," she explained—and that the landlord did not immediately act in an attempt to find a new tenant for September 1. Further, they called into question why the landlord only tried to rent the place for September 15, versus attempting to rent the rental unit for September 3.

I note that both parties testified about the inability of the parties to find a mutually convenient time to conduct the move out inspection. However, I do not find that the testimonies regarding this aspect of the dispute to be material in my decision.

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.

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, 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 respect of the landlord's claims for carpet cleaning ($138.00) and the Fortis BC amounts ($7.32 and $41.46), the tenants did not dispute that aspect of the landlord's claim. As such, I grant the landlord a monetary award of $186.78 for these claims.

In respect of the landlord's claim for the cost of the advertisement, I note that the landlord did not dispute the tenant's description of the difference between a paid ad and an unpaid ad and did not explain why a paid ad was necessary instead of simply using a free advertisement. With close to 30 interested applicants, I find it difficult to accept that a free advertisement would not have the same, or similar, response rate. That having been said, one cannot ignore the fact that the tenants ended the tenancy less than two months into their tenancy, and the landlord attempted to quickly find a new tenant. Taking out a paid advertisement that results in a highlighted, prioritized position on Castanet's listings page is not unreasonable in the circumstances. As such, I find that but for the tenants' breach of the tenancy agreement, the landlord would not have had to take near-immediate steps in finding a new tenant. The landlord has proven the value or cost of the advertisement in the amount of $42.00.

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 met the onus of proving her claim for $42.00 for the advertisement, and I thus award her that amount as it pertains to this aspect of her claim.

Turning now to the landlord's claim for loss of rent, the landlord would not have lost any rent had the tenants not breached their tenancy agreement. The primary question is, has the landlord done whatever is reasonable to minimize her loss?

In this case, the landlord took out an advertisement within mere days of the tenants giving her notice to end the tenancy. She listed the rent as $1,950.00, which, while just over 5% higher than what the tenants were paying, is not exorbitant or unreasonable. Certainly, this amount did not appear to have a deleterious effect on the high number of respondents. She was able to secure a new tenant and enter into a tenancy agreement

on August 21, 2018, less than four weeks after placing the ad.

That having been said, the landlord did not rebut or respond to the tenants' argument that a tenant ought to or could have moved in September 3, instead of September 15. The advertisement could have easily listed the rental unit's availability to be September 1 (the date on which the tenants said they were going to move out). In effect, the landlord did not minimize a potential loss of half a month's rent in listing it as being available for September 15.

While the landlord did not act reasonably in minimizing her loss in respect of rent in the placing of the ad for an availability of September 15, the landlord did act reasonably in listing the rental unit within days of the tenants' notice to end tenancy, and in signing up a new tenant within weeks of the ad being placed. It cannot be ignored that the tenants' breach of the tenancy agreement ultimately resulted in the landlord's losses in respect of rent. As such, taking into consideration all the oral and documentary evidence, and the respective positions of the parties, I find that the landlord has proven a loss of $910.00 for lost rent but reduce this amount by 50% on the basis that it was not proven by the landlord why she could not have rented the rental unit for September 3 or why the advertisement did not list an earlier availability.

I grant the landlord a monetary award of $100.00 for recovery of the filing fee, pursuant to section 72 of the Act. A total award of $783.78 for the landlord is calculated as such

[Note: Correction made on January 14, 2019 by the addition of the claimed filing fee and recalculated total, balance owing, and corrected monetary award and order]:

CLAIM	AMOUNT
Loss of rent (reduced by 50%)	$455.00
Fortis Gas	7.32
Fortis Electric	41.46
Carpet cleaning	138.00
Castanet advertisement	42.00
Filing Fee	100.00
LESS security deposit	($875.00)
Total:	$91.22

Therefore, the landlord is entitled to retain $783.78 of the security deposit in full satisfaction of the award granted and must return the balance of $91.22 to the tenants.

Conclusion

I grant the landlord a monetary award of $783.78, which may be retained from the tenants' security deposit.

I grant the tenants a monetary order in the amount of $91.22, which must be served on the landlord. This corrected order may be enforced in the Provincial Court of British Columbia. This order supersedes the previous monetary order of $191.22.

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: January 10, 2019

Residential Tenancy Branch