



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The tenants advised that they attempted to upload evidence to the Residential Tenancy Branch system, but received an error message, so attended personally at the Residential Tenancy Branch in Burnaby who accepted the evidence for uploading, however I could not access any of the tenants' evidence during the hearing. The landlord advised that he had received the tenants' evidentiary material. I assured the parties that I would not complete this Decision until that evidence had been received by me. I have now received it, and all evidence provided by the parties has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that he had obtained an order permitting the landlord to keep the security deposit in previous Arbitration. A copy of the Decision of the Arbitrator has been provided as evidence for this hearing. Since the matter of the security deposit has already been dealt with, I decline to deal with it again, and I dismiss that portion of the landlord's application.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or loss of rental revenue?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 1, 2017 and was to expire on May 31, 2018, but the tenants vacated the rental unit on October 24, 2017. Rent in the amount of \$2,750.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,375.00, which has not been returned to the tenants due to a previous Arbitration Decision, and no pet damage deposit was collected. The rental unit is a single family dwelling, and copies of the tenancy agreement and Addendum have been provided as evidence for this hearing.

The landlord further testified that the previous Arbitration on December 4, 2017 resulted in a monetary order in favour of the landlord as against the tenants for unpaid rent for the months of September, October and November, 2017. A copy of that Decision has been provided as evidence for this hearing. The Arbitrator found that the contract was binding, but the claim for December's rent was premature and the landlord should try to reduce rent. The landlord did so, but it didn't help.

The rental unit was advertised from \$2,600.00 per month to \$3,500.00 per month over time. At the end of October, 2017 the landlord advertised the rental unit for rent on Craigslist and Kijiji for a tenancy to begin in November, 2017 for \$2,600.00 per month. In December, 2017 the landlord ran more advertisements for \$2,700.00 per month and received no interest. In January, 2018 the landlord advertised again at \$2,750.00 per month, and again in February for \$2,850.00. After 30 days, the advertisements disappear from the media sites, so the landlord was not able to provide copies of the advertisements for this hearing. However, the landlord has provided copies of replies and emails from interested or prospective tenants to establish those dates. They are dated November 18, 2017 and February 5, 2018; as well as January 6, 8, 12, and 13, 2018; February 10, 12, 15, and 20, 2018.

The landlord testified that the rental unit was re-rented for March 3, 2018 at \$2,850.00 per month, and a copy of that tenancy agreement has been provided as evidence for this hearing.

There were a number of factors that affected the ability to re-rent, such as cold weather and location. November to February is the most challenging time of year to rent. It was coming close to spring and the average rental amount was about \$3,000.00 in the area,

and the landlord increased the amount in the advertisements in order to be able to afford it.

The landlord did what he could to re-rent, including allowing pets, which was not the case for this tenancy. The landlord claims the equivalent of 3 months rent for December, 2017 and January and February, 2018, or \$8,250.00.

The tenants have filed a claim as against the landlord in the Provincial Court, Small Claims Division, which is currently scheduled for a trial continuation in March, 2019.

The first tenant (AR) testified that it is no fault of the tenants that the landlord could not re-rent, and the tenant does not believe the landlord did what was reasonable.

The lease was not valid because of a breach by the landlord respecting the tenants' ability to run a daycare in the rental unit. The Arbitrator at the December 4, 2017 hearing refused jurisdiction over the portion where the tenants had claimed that the tenancy agreement included daycare, and the landlord knew that the tenants needed that; they shook hands on it. The tenant went totally on faith rather than having it written into the tenancy agreement, but the tenants could not get the daycare license because there were no occupancy permits on that portion of the rental unit. The landlord breached the agreement from the beginning. Text messages have been provided for this hearing, which refer to negotiations including the daycare.

The second tenant (AGB) testified that the landlord cannot claim more than already awarded after the December 4, 2017 hearing because the landlord increased rent continuously thereby failing to mitigate.

The tenant also testified that after the tenancy began the tenants received an Inspection Report from the City saying that there was no occupancy permit for the 5th bedroom, which was for the tenants' daycare, and as a result the tenants couldn't get a license. Once they found that out, the tenants contacted the landlord in late August, 2017 who responded that it was not a problem, but wanted 50% of the income or another \$1,000.00 per month.

The landlord gave the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 5, 2017 effective September 15, 2017. The tenants disputed it, but found a new place for November 1, 2017 and moved out prior to the December 4, 2017 hearing.

Analysis

In order to be successful in a claim for loss of rental revenue, the landlord must be able to establish that the landlord suffered a loss as a result of the tenants' failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and what efforts the landlord made to mitigate any loss suffered.

I have reviewed all of the evidentiary material, and particularly the Decision of the director from the December 4, 2017 hearing. In that hearing, the landlord had applied for an Order of Possession and a monetary order for unpaid rent, an order permitting the landlord to keep the security deposit in partial satisfaction, and to recover the filing fee from the tenants. The tenants had applied for an order cancelling the notice to end the tenancy, a monetary order, a repair order and to recover the filing fee from the landlord. The applications were joined to be heard together. Since the tenants moved out prior to the hearing the Arbitrator dismissed the landlord's application for an Order of Possession and the tenants' application for repairs.

The Decision also states that the tenants' monetary claim is for loss of business income and associated costs, for which the Arbitrator declined to accept jurisdiction. Part of the tenants' defence to this claim arises out of the same issue; that the landlord breached the tenancy agreement. However, that matter is currently before the Provincial Court, Small Claims Division, and considering that jurisdiction has already been refused under the *Residential Tenancy Act*, I cannot find that it is particularly relevant to this application.

The landlord's claim is for loss of rental revenue after entering into a fixed term tenancy agreement with the tenants. Since there is no dispute that the tenants moved out prior to the end of the fixed term, the most relevant issue is whether or not the landlord did what was reasonable to mitigate any loss suffered. The landlord testified that the advertisements are not available after 30 days at which time they expire, and I accept that testimony.

I have also reviewed the strings of emails provided by the landlord. The landlord testified that there were no interested prospective tenants in December, 2017, and the Craigslist responses are dated November, 2017 and February, 2018. The landlord has already been awarded compensation for November, 2017. The Gmail messages provided by the landlord are dated January and February, 2018, and none of them indicate what amount the rental unit was advertised for.

The landlord testified that the rental unit was advertised as \$2,600.00 to \$3,500.00 per month, and specifically for \$2,600.00 at the end of October, 2017 for a November tenancy; \$2,700.00 in December, 2017; \$2,750.00 in January, 2018 and \$2,850.00 in February, 2018. The landlord testified that the rental unit was re-rented for March 3, 2018 for \$2,850.00 per month. The landlord also testified that he did what he could to re-rent including allowing pets, but could not afford to re-rent for less.

The tenants' defence is that the Decision from the December, 2017 Arbitration suggested that the landlord do what is reasonable to re-rent which might include reducing rent, but the landlord continuously raised the amount of rent in the advertisements. The landlord does not dispute that, however I have no reason to disbelieve that the landlord advertised for a lower amount in December, 2017 and the same amount that the tenants had been paying in January, 2018. Therefore, I am satisfied that the landlord mitigated his loss for those 2 months, and the tenants are liable for 2 months rent, or \$5,500.00. By advertising for a greater amount in February, 2018, I find that the landlord did not mitigate any loss, and that the rental unit may have re-rented if the landlord had not increased the rent.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in the amount of \$5,600.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,600.00.

This order is final and binding and may be enforced.

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: February 05, 2019

Residential Tenancy Branch