



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order as against the tenant for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for 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 tenant for the cost of the application.

The landlord and the tenant and legal counsel for the tenant attended the hearing, and the parties each gave affirmed testimony. The parties each called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

At the commencement of the hearing the landlord amended the monetary claim to \$1,616.70 and withdrew the application for a monetary order for damage to the rental unit or property, and withdrew the application for an order permitting the landlord to keep the security deposit.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence relevant to this dispute has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2017 and was to expire on October 31, 2018 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,650.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00, and no pet damage deposit was collected. The rental unit is a condominium apartment in a complex containing 27 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord has provided a copy of a Decision of the director, Residential Tenancy Branch dated March 25, 2019 following a hearing the same date. It shows that the tenant had applied for a monetary order for return of the security deposit. The landlord attended the hearing, but no one for the tenant attended, and the tenant's application was dismissed without leave to reapply. The Arbitrator ordered that the landlord may retain the security deposit of \$825.00 in its entirety.

The landlord testified that the tenant applied for a Review of that Decision, and was not successful. The Arbitrator who considered the Application for a Review Hearing ruled that there was no basis on which the March 25, 2019 Decision should be varied or set aside, and was confirmed.

The landlord has also provided a Monetary Order Worksheet setting out the following claims:

- \$791.70 for damage to the ensuite bathroom; and
- \$1,650 for breaking the lease a month early.

The landlord's total claim of \$2,441.70 is reduced because the security deposit exceeded the damage claim of \$791.70 by \$33.30. The sum of \$33.30 is therefore applied to the landlord's claim of \$1,650.00 for loss of rental revenue, for a total claim of \$1,616.70.

The landlord further testified that on August 31, 2018 the landlord received an email from the tenant, a copy of which has been provided for this hearing stating that the tenant would be moving from the rental unit effective September 30, 2018, however the fixed term wasn't to expire until a month later.

The landlord advertised on Craigslist on September 1, 2018 as well as on Kijiji the same date and another site suggested by the tenant. The advertisements ran continuously for a month at \$1,750.00 per month. The landlord retained a property manager on September

30, 2018 who suggested reducing the rental amount to \$1,650.00 and then it was re-rented effective January 1, 2019. The unit beside is renting for \$2,100.00 per month.

The rental unit was shown several times, and the tenant didn't want people in the rental unit while she was away working. One prospective tenant agreed to rent, but backed out. There were also other showings.

The landlord claims \$1,616.70 for the tenant breaking the lease by moving out a month early, and recovery of the \$100.00 filing fee.

The landlord's witness testified that he was present when the tenant had agreed to let people in for showings during the first 2 weeks of September, 2018, but not for the last 2 weeks because the tenant said she didn't feel comfortable having people in her home while she was out of town.

The tenant also told the witness that it would be easy to re-rent within 2 weeks, but whether it was re-rented or not, the tenant signed the tenancy agreement and owes the landlord for that last month of rent.

The tenant testified that she did tell the landlord that it was her preference to not have showings while the tenant was away, but that didn't happen and it was not asked of the tenant until September 9, 2018. On that date, the landlord attended at the rental unit to take photographs to put on the rental listing. The tenant received a text message from the landlord on September 10, 2018 stating that the advertisement was on Craigslist, however the advertisements were not on 3 sites for sure by September 1, 2018.

The tenant further testified that during the move-out condition inspection on September 30, 2018 the landlord said that some prospective renters were interested, but she didn't want to rent to students.

The tenant's witness testified that she has been a landlord for about 20 years and currently has 4 rentals.

The witness was present during the move-out condition inspection on September 30, 2018, during which the landlord said that she had listed the rental unit for rent but was having trouble finding suitable tenants. One group backed out and the landlord commented that others were students and the landlord was not going to rent to students. The landlord also commented that it was all too much for her and that she had hired a management company because she couldn't deal with it anymore. The landlord doesn't reside in the same City as the rental unit, which would also make it more difficult for her, however the landlord felt she was covered because she had a signed contract with the tenant.

The witness explained to the landlord that she shouldn't have trouble renting, and that the witness was at that time in the process of renting a unit. Within minutes witness was inundated with text messages from prospective renters and her rental unit was rented in less than a week.

During closing submissions the tenant alerted me to a letter provided as evidence for this hearing about the tenant being harassed by the Strata Council, and the tenant submits that as a result of the harassment, the tenant was justified in moving out early.

Analysis

Where a party makes a monetary claim for damage or loss, including loss of rental revenue, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, there is no dispute that the parties entered into a fixed term tenancy agreement that was to expire on October 31, 2018, but the tenant moved out a month earlier without paying rent for October. The landlord has also explained the amount claimed, which I accept, and I find that the landlord has established elements 1, 2 and 3 in the test for damages.

The tenant's legal counsel correctly raised element 4 and submitted that Policy Guideline 5 – Duty to Mitigate applies in this case, and I agree.

I consider the testimony of the tenant's witness, who is an experienced landlord in the same community as the rental unit, who testified that she becomes inundated with applications or requests to rent her rental properties. I also consider the testimony of the tenant that the landlord, who testified that the advertisements started online on September 1, 2018, didn't take photographs of the rental unit to put in the advertisements until September 9, 2019. The landlord testified that the advertisements were for \$100.00 more per month than the tenant had been paying, and that another unit next to her rents for even more. The landlord has not provided any evidence to support the testimony that advertisements started on September 1, 2018 or what other similar units rent for in the community, but once the landlord reduced the rent, the new property manager was able to re-rent. Because the landlord advertised for a greater

amount, I am not satisfied that the landlord would not have been able to re-rent sooner, and has not demonstrated mitigation.

Therefore, I dismiss the landlord's application.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: May 03, 2019

Residential Tenancy Branch