Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord seeks compensation for loss of rent in the amount of $2,400.00 under section 67 of the *Residential Tenancy Act* (the "Act"), and, seeks compensation for the filing fee in the amount of $100.00 under section 72 (1) of the Act.

The landlord applied for dispute resolution on January 22, 2019 and a dispute resolution hearing was held on May 14, 2019. The landlord and the tenant attended the hearing, and 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 evidence or the Notice of Dispute Resolution Proceeding.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issues

1. Is the landlord entitled to compensation for loss of rent?

2. Is the landlord entitled to compensation for the cost of the filing fee?

Background and Evidence

The landlord's Application for Dispute Resolution included the particulars of her claim, as follows (reproduced as written):

> Rent of $2400.00 a month and signed contract, one of the tenants messaged me Dec 16th, 2018 to say they will not be moving in Jan 1st, 2019 due to separation and did not hear from other tenant. I attempted to find another tenant to which I have starting Feb 1st 2019. I have the $1200.00 deposit to which I would like to hold towards the costs of January, I also have no forwarding address for other tenant. I have $1200.00 deposit so looking for the remaining $1200.00 to cover January 2019 Rent.

The landlord testified that the tenant and a co-tenant (the tenant's former partner, who is not a party to this application) signed a written tenancy agreement on December 15, 2018. Monthly rent was $2,400.00 and the tenants paid a security deposit of $1,200.00. A copy of the written tenancy agreement was submitted into evidence.

On December 16, 2018, the tenant messaged the landlord and explained that she had just broken up with the co-tenant and wanted the security deposit back. She told the landlord that she was unable to move into the rental unit.

The next day, the landlord advertised on Facebook pages and numerous rental sites for the municipality but was unable to find new tenants so close to Christmas. The landlord—a single parent with a mortgage—was "absolutely desperate" to find new tenants and listed the rental unit at a lower monthly rent of $2,200.00. She received a few inquires after the advertising went up, but all of the prospective tenants were not interested or able to move until the New Year.

Ultimately, the landlord found new tenants at the end of January 2019 who moved in on March 1, 2019.

The tenant did not dispute the landlord's testimony as to how the tenancy agreement was entered into, or to the general facts surrounding how the tenancy agreement was ended. Unfortunately, a "whole bunch of personal things" occurred in a very short period after the tenancy agreement was signed (including the unfortunate breakup of the tenant and her then co-tenant partner).
Her then-decreased income (because the co-tenant was no longer in the picture) would not let her rent at $2,400.00 a month. She testified that she makes about $700.00 every two weeks, and as a single parent with four children simply could not continue under the tenancy agreement.

I note that, and this is rare in landlord-tenant disputes, the parties expressed heartfelt and sincere empathy for each others' plights, and, to the unfortunate circumstances that lead to the dissolving of the tenancy agreement which ultimately lead to this dispute.

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.

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, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the 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 the damage or loss?

In this case, the tenant gave notice to end the tenancy on December 16, 2018, for a tenancy that had not yet began on January 1, 2019. Section 45 (1) of the Act states that

> A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) 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.

Here, the tenant's notice to end the tenancy was earlier than permitted under the Act. But for the tenant's breach of section 45(1) of the Act the landlord would not have suffered a loss, which the landlord has proven to be in the amount of $2,400.00.

Lastly, did the landlord do whatever was reasonable to minimize her loss? I find that she did: she not only advertised for the rental unit within a day of the tenant's giving notice, she also lowered the monthly to $2,200.00 in an effort to find new tenants. These steps, I conclude, are reasonable in the circumstances, and especially so considering the time of year that the landlord was attempting to find new tenants.

And, while I empathize with the tenant and the dismal circumstances leading to the early ending of her tenancy, both the tenant and the co-tenant were responsible for paying the rent for January 2019 and were required to give proper notice to the landlord to end the tenancy.

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 compensation in the amount of $2,400.00 for lost rent.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful I grant her claim for reimbursement of the filing fee.

Accordingly, a total monetary award of $2,500.00, and a monetary order of $1,300.00 for the landlord is calculated as follows:

CLAIM	AMOUNT
Loss of rent	$2,400.00
Filing fee	$100.00
LESS security deposit	($1,200.00)
Total:	$1,300.00

Conclusion

I order that the landlord may retain the full security deposit of $1,200.00 in partial satisfaction of the above-noted award.

Further, I grant the landlord a monetary order in the amount of $1,300.00, 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.

This decision is final and binding, except where permitted by the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 14, 2019

Residential Tenancy Branch