



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

Both parties attended the original hearing date of May 6, 2019. No issues were raised with respect to the service of the landlord’s application, amended application and the parties’ respective evidence submissions on file. An Interim decision was issued on May 6, 2019 and a copy of the decision and Notice(s) of reconvened hearing date and time was sent to both parties by the Residential Tenancy Branch (the “Branch”).

I am satisfied that the tenant was served with the Landlord’s application and was aware of this reconvened hearing date and time. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for unpaid rent and damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

A written tenancy agreement was entered into on June 14, 2018. A copy of the written agreement was provided on file. The tenancy began on July 1, 2018 with a monthly rent of \$2500.00 payable on the 1st day of each month. The lease is for a one year fixed term ending July 1, 2019. The tenant paid a security deposit of \$1250.00 at the start of the tenancy.

The tenant operates a business of placing international students with colleges and universities. The tenant does not occupy the rental unit but rather sublets the leased premises to international students. The tenant has other similar lease agreements with the landlord.

The landlord testified that on January 6, 2019 the subtenant contacted the caretaker through e-mail stating he was terminating the lease as he had to leave the country urgently. The subtenant left the key for the landlord and left the next day. The landlord followed up with the tenant to pay the outstanding rent for January 2019 and advised that they do not recognize the subtenant as someone that can terminate the lease. The landlord testified that the tenant declined to pay the rent and has not paid any rent since. The landlord testified they attempted to mitigate losses by placing an advertisement for rent as soon as possible. Copies of the advertisements were submitted as evidence. The landlord testified they even reduced the rent significantly in order to mitigate losses. The landlord testified that they were able to re-rent the unit as of May 1, 2019 at a reduced rent of \$2000.00. The landlord is claiming unpaid rent of \$2500.00 for January 2019 through to April 2019.

The landlord testified the subtenant left the rental unit on one day's notice and left the unit full of furniture and in very bad shape. The landlord testified they had to hire movers to move the subtenant's belongings into storage and cleaners to clean the apartment before they could advertise the unit again in order to mitigate losses. Receipts for the movers and cleaners were submitted.

The landlord is also claiming the tenant has not paid outstanding utilities as required by the tenancy agreement. The landlord submitted correspondence with the City of New Westminster detailing the outstanding balance left by the tenant.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find the tenant breached the fixed term lease agreement and has failed to rent for January 2019 to April 2019 in the amount of \$2500.00 per month. I find the landlord attempted to mitigate losses by attempting to re-rent the unit as soon as possible and even reduced the rent significantly to secure a new tenant. The landlord is awarded \$10,000.00 for unpaid rent for this period.

I accept the landlord's undisputed testimony that the subtenant suddenly vacated the unit leaving it full of furniture and did not leave the rental unit reasonably clean. The tenant ignored the landlord's requests to pay the rent or rectify the situation caused by the subtenant. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenant. The landlord submitted receipts in support of the amounts claimed to clean the unit and to hire movers. The landlord is awarded \$796.69 as claimed for these expenses.

I also accept the landlord's undisputed testimony and evidence in support of the claim for unpaid utilities in the amount of \$362.29.

The landlord is entitled to a total monetary award of \$11,158.98.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$11,258.98.

The landlord continues to hold a security deposit in the amount of \$1250.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$10,008.98.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,008.98. 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.

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 06, 2019

Residential Tenancy Branch