



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 15, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent ; and
- an order granting recovery of the filing fee.

The Landlord's Agent, M.W., as well as the Tenants attended the hearing at the appointed date and time and provided affirmed testimony.

M.W. testified that she served the Landlord's Application and documentary evidence package to the Tenants by registered mail shortly after submitting the Application on April 15, 2019. The Tenants confirmed receipt. The Tenants testified that they served the Landlord with their documentary evidence by registered mail on July 8, 2019. M.W. confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on July 1, 2017. On July 1, 2018 the parties entered into a new fixed term tenancy agreement which was meant to end on June 30, 2019. The Tenants paid rent in the amount of \$2,366.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,137.50. The parties agreed that the Landlord returned the remaining portion of the Tenants deposit following the mutually agreed upon deductions. The tenancy ended on April 3, 2019.

M.W. testified that the Tenants provided the Landlord with their notice to end tenancy on January 15, 2019 with an effective vacancy date of March 15, 2019. M.W. stated that after receiving the Tenants notice, the Landlord placed several advertisements in an attempt to re-rent the rental unit. M.W. stated that the Tenants elected to extend their tenancy until April 3, 2019 as the Landlord had not yet found a new occupant to occupy the rent unit. M.W. stated that despite the Landlord's efforts, they were unable to secure a new tenancy until April 3, 2019. M.W. stated that the new occupants took possession of the rental unit on April 26, 2019 and paid a pro-rated rent for April 2019 in the amount of \$394.33.

M.W. stated that the Landlord is seeking compensation in the amount of \$1,971.67 for the remaining portion of April 2019 as the Landlord was unable to re-rent the rental unit until April 26, 2019. M.W. stated that the Tenants ended their fixed term tenancy early, resulting in the Landlord suffering a loss of \$1,971.67. M.W. stated that the Landlord is also seeking the return of the filing fee.

In response, the Tenants stated that they provided their notice to end tenancy to the Landlord on January 15, 2019 as a result of some health and safety concerns that they had in regards to the rental unit. The Tenants stated that they notified the Landlord about their concerns, however, stated that the Landlord did not take action, therefore,

they felt justified in ending their tenancy early. The Tenants stated that they were flexible with their move out date and offered to subsidize the rent until the end of their fixed term tenancy, should the Landlord wish to lower the rent in an attempt to generate more interest in the rental unit.

The Tenants stated that they feel as though the Landlord did not do enough to mitigate their loss. The Tenants stated that the Landlord did not update their advertisements for the rental unit; therefore, the advertisements fell to the bottom of the listings. The Tenants stated that in mid-March 2019, they were unable to locate the Landlord's advertisements. The Tenants stated that they remained flexible to accommodate the Landlord with move out dates and feel as though the Landlord had sufficient time to secure a new occupant for the rental unit. Lastly, the Tenants stated that the property manager who conducted the showings was unfamiliar with the rental unit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, A tenant may end a fixed term 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,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *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.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, the Tenants stated that they felt justified in ending the fixed term agreement due to the fact that the Landlord did not respond to their health and safety concerns.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, Policy Guideline #8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) *that there is a problem;*
- (b) *that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) *that if the problem is not fixed by the deadline, the party will end the tenancy.*

According to Section 45(3) of the Act; if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, I accept that the Tenants communicated their health and safety concerns to the Landlord. However, I find that the Tenants did not communicate that they believed these problems were a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Tenants did not provide adequate notice to the Landlord pursuant to section 45(3) of the *Act*.

I accept that the parties entered into a new fixed term tenancy on July 1, 2018 which was meant to end on June 30, 2019. The parties agreed that the Tenants provided their notice to end tenancy to the Landlord on January 15, 2019 indicating that the tenancy will end on March 15, 2019 before the Tenants extended their tenancy until April 3, 2019.

I accept that the Landlord immediately placed several advertisements and conducted several showings in an attempt to re rent the unit, however, was unable to find a new suitable occupant until April 26, 2019. I find that the Tenants were not entitled to end the fixed term tenancy early, which resulted in the Landlord incurring a loss of rental income in the amount of \$1,971.67. I further find that the Landlord took reasonable steps to mitigate their loss. As such, I find that the Tenants are responsible to pay rent for the remaining portion of April 2019 rent in the amount of \$1,971.67.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,071.67.

Conclusion

The Tenants breached the Act by ending their fixed term tenancy early. As such, the Landlord is granted a monetary order in the amount of \$2,071.67. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: July 16, 2019

Residential Tenancy Branch