



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hellolandlandord Agency Vancouver
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy with a numbered company (the “Company”) started under written agreement on May 7, 2018 for a fixed term to end April 30, 2019. The tenancy agreement required the Tenants to vacate the unit at the end of the fixed term noted as a sublease. The agency named as Landlord in this application acts for the Company in managing the rental unit. The tenancy ended on April 30, 2019. Rent of \$5,100.00 was payable on the first day of each month. The security deposit has been dealt with. Neither Party provided a copy of the tenancy agreement.

The Tenants state that the Landlord presented the unit as a sublet to in order to obtain the Tenants' agreement to a move-out requirement on a fixed term lease and in order to avoid extending the tenancy. The Tenants state that when they entered into the tenancy they were told that the owner would be moving back into the unit at the end of the tenancy but that the tenancy agreement indicates that the reason for the requirement to move out is that it is a sublease. The Tenants state that near the end of the tenancy the Tenants asked for an extension to the tenancy but were refused. The Tenant states that the unit was advertised and shown to prospective tenants before they moved out. The Tenant provides an advertisement of the unit for a tenancy start date of May 1, 2019. The Tenants state that the Landlord misused the sublease provisions under the Act. The Tenant submits that they requested an extension of an additional four months as they required a residence until August 2019 at which time they were moving out of the province. The Tenant states that the Landlord refused to extend the lease. The Tenant submits that they were unable to obtain a short-term rental other than a unit that was available for greater rent of \$6,000.00 per month. The Tenant submits that they had no other choice but to take this rental despite their inability to afford the rent. The Tenant states that prior to moving out of the unit the Tenants did not know their rights and did not enquire about their rights. The Tenants claim costs of \$9,100.00 for the cost of the increased rent for four months that the Tenants argue were caused by the Landlord's misuse of the sublease.

The Landlord states that the Tenants were aware and informed of the tenancy being a sublease when they entered into the tenancy agreement. The Landlord states that the Tenants were never told that anyone would be moving into the unit at the end of the tenancy. The Landlord states that the owner of the rental unit who does not reside in Canada created the Company as the owner did want to incur taxes on the rental income. The Landlord provides a copy of an agreement between the owner and the Company assigning all rents for the rental unit from the owner to the Company. The Landlord confirms that the owner is the director of the Company and provides

documents indicating that the owner is the sole shareholder and director of the Company. The Landlord states that the sublease was used for the tenancy agreement with the Tenants as the owner wanted to keep its options open for selling or renovating the unit at the end of the fixed term. The Landlord provides a copy of a tenancy agreement for the unit between the owner and the Company with a fixed term from May 1, 2018 to May 1, 2019. This tenancy agreement required the Company to vacate the unit at the end of that term and indicates this requirement is pursuant to a mutual agreement. The Landlord states that as the Tenants knew this was a sublease arrangement at the outset of the tenancy they should have planned for another rental at the end of the term including possible higher costs. The Landlord also argues that the Tenant's current residence is a new house in a better area and is a short-term rental so there is no comparison with the rental rates in the rental unit. The Landlord states that after the end of the tenancy some renovations were being done but does not recall the dates of those renovations. The Landlord states that the next tenancy started in June 2019.

The Tenant states that a flood occurred in the basement of the 6-bedroom, three story rental unit on January 2, 2019 making the basement unliveable. The Tenant states that the Landlord did nothing to remedy the flood, so the Tenants brought in plumbers and drying fans. The Tenant states that as a result of the flood they lost use of the basement providing 2 bedrooms, a bathroom, a living room, laundry room, and a kitchen for a total of approximately 1/3 of the total living space rented to the end of the tenancy. The Tenant states that the entire house of approximately 3,500 square feet and the basement is 1,100 square feet. The Tenant states that all areas of the basement were used by the Tenants. The Tenants claim 1/3 of their rent paid for the period January to April 2019 inclusive in the amount of \$1,700.00 per month. The Tenant states that the Landlord only agreed to reimburse the Tenants \$1,000.00 per month for the loss, so the Tenants claim the remaining \$700.00 for 4 months or a total of \$2,800.00. The Tenants submit that they are not claiming for their time and

expenses, including the storage of and damage to their furnishings, that they lost taking care of the problem while they were on vacation.

The Landlord states that the basement area only has one bedroom with an extra room. The Landlord states that the basement area comprises 1,000 square feet of a total of approximately 3,490 square feet. The Landlord states that the Tenant is only entitled to a loss of ¼ use of the unit. The Landlord states that the Tenant also had two persons occupy the basement as an illegal sublet. The Landlord provides a copy of a property assessment indicating only 5 bedrooms in the unit. The Tenant states that from the onset of the tenancy the Landlord had left a king size and a queen size bed in the basement. The Landlord states that only one mattress was left in storage at the unit.

The Tenant states that they incurred a higher use of their hydro for the operation of the fans for 6 to 8 weeks after the flood. The Tenants states that their hydro bills show the spike in hydro usage and the Tenants provide copies of their hydro bills for the period November 2018 to April 2019. The Tenant states that the Landlord agreed to pay for the increased hydro costs and never did. The Tenant claims \$170.00 for the increased hydro usage. The Tenant provides bills showing the hydro costs for the two months immediately preceding the flood show at \$142.46, and the hydro costs for the two months after the flood, February to April 2019 at \$81.34 and the hydro costs for December 2018 to February 2019 at \$244.45. The Landlord states that the Landlord only agrees to a reimbursement of \$100.00 as the Tenant's claim is excessive.

Analysis

Section 1 of the Act provides that a "**sublease agreement**" means a tenancy agreement

(a)under which

(i)the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii)the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

(b)that specifies the date on which the tenancy under the sublease agreement ends;

An essential element of a valid agreement or contract is consideration. Consideration can be a value, right, interest or benefit given or received.

Given the Landlord's evidence of the assignment of rents agreement between the owner and the Company and without any other evidence, I find that there was no valuable consideration either given or received between the owner and the company for the tenancy agreement between these parties. As there is no evidence of any consideration between the owner and the Company I find on a balance of probabilities that there was no valid tenancy agreement between the owner and the Company and that the Company could therefore not transfer any valid sublease rights to the Tenants under a sublease agreement. Without a valid sublease the Company could not require the Tenant to move out of the unit at the end of the fixed term.

Section 5 of the Act provides that Landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Section 44(1) of the Act only allows a move-out clause at the end of a tenancy term where the tenancy is a sublet or where the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term. Section 13.1(2) of the Regulation provides that the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a)the landlord is an individual, and

(b)that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Given the evidence of the assignment of rents to the Company and the Landlord's evidence that the Landlord wanted to keep its options open for the use of the rental unit after the end of the fixed term, I find on a balance of probabilities that the owner, Company and Landlord knowingly used an invalid sublease agreement with a required move-out clause with the Tenants to avoid the Act's restrictions on move-out clauses. As a result, I find that the requirement for the Tenants to move out at the end of the fixed term tenancy had no effect.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the Landlord knowingly used an ineffective move-out term to avoid the Act, to require the Tenants to move out of the unit and to refuse the continuation of the tenancy at the end of the term on a month to month basis, I find that the Landlord, breached the Act and that this breach caused the Tenant higher rental costs as a result of the move out of the unit. The Tenant has substantiated an entitlement to compensation. As there is no supporting evidence to contradict the limited availability of other rentals and considering that the Tenant's evidence of limited availability holds a ring of truth, I find that the Tenant is entitled to the compensation. Given the evidence that the Tenant was required to pay \$5,100.00 under the tenancy agreement and evidence that the Tenant was required to pay \$6,000.00 for the next tenancy, I find that the Tenant is only entitled to the difference between the two rental amounts for the four months claimed in the total amount of **\$3,600.00** (\$900.00 x 4).

Section 65(1)(f) of the Act provides that if a landlord has not complied with the with the Act, the regulations or a tenancy agreement, an order may be made that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. The tenancy agreement provides for the provision of the entire unit. Based on the undisputed evidence that the Landlord did not immediately respond to the flood or arrange for plumbing repairs and remediation from the flood, and that the

Tenants lost use of a portion of the unit for 4 months I find that the Landlord was negligent in providing the full unit to the Tenants as required by the tenancy agreement. The Tenants are therefore entitled to a reduction in their past rent paid for the unit. Although the Parties give different proportionate losses based on different estimations of the square footage, I consider, given the undisputed evidence that two persons used the basement area and the undisputed evidence that in addition to the one bedroom there was another room, I find that the loss of the basement was equivalent to a loss of 1/3 of the use of the unit. I find therefore that the Tenants are entitled to the **\$2,800.00** claimed.

Given that the hydro costs for the same period preceding the flood was approximately \$100.00 less than the costs during the period of the flood and the costs for same period during the flood period was approximately \$163.00 greater than the same period following, I find on a balance of probabilities that the Tenants have substantiated an increase in average usage during the flood period of **\$160.00**. As a result, I find that the Tenants are entitled to that amount as reimbursement for their increased hydro costs.

As the Tenants' claims have met with success I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,660.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$6,660.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 28, 2019

Residential Tenancy Branch