Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTEND RENTAL SOLUTIONS INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

On February 24, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act.*

S.C. attended the hearing as an agent for the Landlord. The Tenants also attended the hearing with R.K. attending as an advocate for Tenant R.H. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served by email on March 8, 2019 to each of the Tenants pursuant to a Substituted Service Order dated March 7, 2019. However, this Order stated that "The landlord may serve Tenant S.C. and Tenant C.C." only in this manner, and that service to Tenant R.H. was dismissed with leave to reapply. As the Landlord was not permitted to serve this package to Tenant R.H., any Orders awarded in this decision will not be enforceable upon this Tenant. Tenants S.C. and C.C. confirmed receiving this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that Tenants S.C. and C.C. were sufficiently served the Landlord's Notice of Hearing and evidence package pursuant to the Substituted Service Order.

Tenant S.C. advised that she served her evidence to the Landlord by mail, but it was not delivered. As well, she stated that she went to the address provided on the Landlord's Application. However, the building had multiple businesses within it, the company name was not available on any directory, and any adjoining business within

this building had not heard of the Landlord's company. The Landlord confirmed the address of her company; however, while she provided a street address, she failed to include the unit number of her company in any correspondence and neglected to provide a service address for the Landlord in any of the tenancy agreements that she submitted as documentary evidence. As the Landlord has failed to provide an adequate address for service, and as I am satisfied of Tenant S.C.'s affirmed testimony that she attempted to serve her evidence, I have accepted the Tenants' evidence and will consider it when rendering this decision. The Landlord is cautioned that they are required to provide their service address to avoid such problems in the future.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on November 1, 2017 as a fixed term tenancy for one year. However, the tenancy ended on January 1, 2018 when the Tenants gave up vacant possession of the rental unit. Rent was established at $2,250.00 per month, due on the last day of each month. A security deposit of $1,125.00 was also paid.

The Landlord advised that she is seeking compensation in the amount of **$2,700.00**, calculated as a rental loss of $300.00 per month from the months of February 2018 to October 2018. She advised that the Tenants gave up vacant possession of the rental unit in January 2018 and based on the condition it was left, it took a long time to clean.

As well, she submitted that the Tenants smoked marijuana in the rental unit and this smell lingered in the rental unit, in addition to the smell of pets. She advised that she advertised the rental unit online in early January 2018; however, due to the odour, she had difficulty renting it. In addition, she stated that no prospective tenants wanted such a large rental unit, so she could not re-rent it for the same amount of rent. Therefore, she rented the unit to a mother of three for a reduced rent of $1,950.00 per month, starting on January 20, 2018. She stated that she was not seeking compensation for the loss of January 2018 rent.

Tenants S.C. and C.C. advised that there is no proof of a marijuana smell and they were never issued any warnings for smoking in the rental unit. As well they stated that they researched online how long a marijuana smell would linger in a property and it indicated that this would last six hours only. They stated that there was one person that was willing to rent the space; however, he was not interested in moving in as the “place looked like a slum.” They also stated that they went to the dispute address two weeks ago and the rental unit was not there anymore. They advised that the house was demolished, that a new house was in its place, and they submitted a picture as documentary evidence to corroborate this submission. They stated that they talked to the construction workers on site and the workers advised that they had been doing this construction for at least six months; however, it was not determined when the rental unit was demolished.

The Landlord advised that she was not sure when the rental unit was demolished, as her company does not represent the owner of the property anymore.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or

loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from November 1, 2017 for a period of one year, yet the tenancy effectively ended when the Tenants vacated the rental unit on January 1, 2018.

Section 44 of the *Act* sets out how tenancies end, and the undisputed evidence is that this tenancy ended due to a 10 Day Notice for Unpaid Rent. As the Tenants were still in the midst of their fixed term tenancy when it ended, I find that as a result of the Tenants' actions, the Landlord was put in a position to potentially suffer a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the evidence before me, while the Tenants claim that they never smoked marijuana in the rental unit, it does not make sense to me why they would then testify that they were never warned about smoking in the rental unit or that they researched how long the odour of marijuana would last. As such, I find their submissions to be suspicious and dubious on this point. With respect to their submissions regarding the rental unit being demolished, they stated that they went to the dispute address two weeks ago and that they suspect that the house was demolished six or eight months ago, but they are uncertain of this. By my calculation, if this were true, this would have happened in October 2018 at the earliest which would have still been within the Tenants' original fixed term tenancy. As such, I find that the Tenants would still be potentially responsible for any rental loss for this month and any months prior.

However, the onus is on the party making the Application to substantiate their claims. While the Landlord provided testimony with respect to her efforts to mitigate this loss, she did not submit any documentary evidence to substantiate why she had difficulty re-renting the unit at the same amount of rent. There was no documentary evidence of how many prospective tenants applied but were not interested, any correspondence from prospective tenants advising that $2,250.00 was too much rent, or any

documentary evidence of any negotiation on the part of the Landlord to indicate that she attempted to rent the unit at this amount but could not. As such, I am not satisfied that the Landlord made attempts to re-rent the rental unit as quickly as possible for the same amount of rent but was unable to do so. Consequently, I dismiss the Landlord's Application in its entirety.

As the Landlord was not successful in her claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

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: June 20, 2019

Residential Tenancy Branch