



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIGHPOINT REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT MNDCT MNSD**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38; An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with MN, agent ("the tenant"). The landlord's agent SH ("the landlord") attended. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant served the landlord in accordance with the *Act*.

The tenant withdrew the tenant's claim for reimbursement of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed on the following. They entered into a 1-year tenancy agreement which began on May 23, 2017 and was scheduled to end May 31, 2018; the tenancy continued thereafter as month-to-month. The tenant vacated the unit at the end of August 2018. Rent was \$3,200.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit which the landlord retained with the tenant's authorization. The tenant was responsible for the payment of utilities. A copy of the tenancy agreement was submitted as evidence.

The parties agreed the landlord deducted \$3,870.18 from the tenant's account for each of the eight months from and including September 2018 to April 2019. The tenant claimed compensation in the amount of \$30,961.44 as well as reimbursement of the filing fee for a total claim of \$31,961.44.

The tenant testified as follows. The tenant has a concrete business and the unit was used for employees. When the fixed term tenancy was up in May 2018, the tenant testified the parties agreed the rental would continue on a month-to-month basis until the tenant no longer needed the unit.

The tenant testified he informed the landlord early August 2018 that he no longer needed the unit and would be ending the tenancy at the end of August 2018; he said that the landlord agreed. The tenant claimed that the parties exchanged texts in confirmation of this agreement. However, at the hearing, the tenant testified that he now has a new phone and does not have copies of the communication.

The tenant testified he paid for a cleaner for the unit, took away all his possessions and assumed the tenancy was over August 30, 2018. He stated that one of his employees, TN, who was not called as a witness, conducted a "walk through" with SH, the agent for the landlord, although a condition inspection report was not completed on moving in or moving out.

Unbeknownst to the tenant, the landlord continued to withdraw the sum of \$3,870.18 from the tenant's account until the error was discovered by bookkeeping and administrative staff of the tenant in April 2018. The tenant instructed the landlord to stop the withdrawals and claimed reimbursement of the overpaid rental for eight payments of \$3,870.18 each.

The tenant's testimony was supported in all respects by the affirmed testimony of MN who stated that she investigated the circumstances surrounding the tenancy and the overpayment of rent. MN stated that she was a recent employee of the tenant and her information came from enquiries and review of documents.

The landlord disagreed with key factors in the tenant's testimony. He agreed that the tenant informed him in early August 2018 that the tenant no longer needed the unit at the end of August 2018. The landlord stated that he tried to find a replacement tenant for the unit. However, the landlord testified that he told the tenant that the landlord required a written notice that the tenant was ending the tenancy. When the tenant did not provide a written notice, the landlord stopped looking for a new occupant for the unit.

The landlord testified that he considered the tenancy as ongoing on a month-to-month basis after the expiry of the fixed term without the written notice to end tenancy. The landlord denied that any walk through took place as claimed by the tenant. The landlord claimed damages to the unit but submitted no receipts in support of repairs or expenses. The landlord acknowledged the landlord had not informed the tenant of any damage or requested reimbursement for any such costs until April 2019.

The landlord explained that, although the rental was \$3,200.00, the amount of \$3,870.18 was deducted from the tenant's account as additional compensation for utilities and that the tenant had agreed to this deduction; the tenant denied any such agreement. The landlord did not provide evidence of expenses for utilities relating to the unit or any justification for the calculation.

The landlord stated the unit was vacant during this 8-month period and was rented again effective May 1, 2019, shortly after the tenant demanded that the withdrawal of rental payments stop.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the tenant to prove the tenant is entitled to a claim for a monetary award.

I find that the tenant has met the burden of proof on a balance of probabilities regarding all four elements as set out above. I find that the landlord breached the tenancy agreement by continuing to withdraw money from the tenant's account after the tenancy ended. In reaching this finding, I have considered the tenant's testimony and that of MN, his administrative staff who attended the hearing and find their testimony to be believable and reliable. I give weight to the fact that MN supported the tenant in all material aspects of his testimony.

Their oral testimony is supported by the documentary evidence submitted, namely, the parties' lease which expired in May 2018, three months before the termination of the lease. It seems to be more likely than not, that the lease was over because, firstly, the term had ended, and, secondly, the tenant did not need the unit for employees any longer. I find it more likely than not that the parties agreed the tenancy was over on August 30, 2019.

I find the landlord has not provided a plausible explanation for the amount withdrawn by the landlord in the subsequent months. The calculation of the amount over and above rent is inexplicable; the landlord's explanation was incoherent and baffling. I do not accept the landlord's evidence as plausible that the extra amount collected was for utilities given that the unit was vacant, no evidence was submitted of any such agreement that the landlord could recover utility costs, and the tenant vehemently denied any such arrangement.

I have considered that the evidence of the landlord contradicted the evidence of the tenant in key respects. Most importantly, the landlord claimed the parties did not agree the tenancy was over at the end of August 2018. I do not put as much weight on the landlord's testimony which I found to be self-serving, contradictory and implausible. The landlord acknowledged that the tenant informed him he was vacating the unit at the end of August 2018 and the landlord started advertising for a replacement occupant. Yet nevertheless, the landlord continued to deduct rent and utilities, stopped advertising, and collected unauthorized rent. It is not credible that he assumed the tenant was still in the unit simply because he did not receive the requested written notice. The landlord's explanations do not have a ring of truth.

I therefore grant the tenant a monetary award in the amount of \$30,961.44. As the tenant has been successful in this claim, I award the tenant reimbursement of the filing fee of \$100.00 pursuant to section 72 for a total monetary order of \$31,961.44.

Conclusion

I grant the tenant a monetary order in the amount of \$31,961.44. This order must be served on the landlord. If the landlord fails to pay this amount, the tenant may enforce this order in the Supreme Court of British Columbia, Small Claims Division 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: August 09, 2019

Residential Tenancy Branch