



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER LUXURY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, MNR, MNSD, FF

Introduction

On May 9, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking a monetary order for money owed or compensation for damage or loss; for loss of rent; to retain the security deposit; and to recover the filing fee for the Application.

The Landlord's agent ("the Landlord") and the Tenant, Ms. K.J. attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant testified that she received a copy of the Landlord's documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent?
- Is the Landlord entitled to a monetary order for liquidated damages?
- Is the Landlord entitled to keep the security deposit towards the loss of rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on October 1, 2018, as a two year fixed term tenancy to end on September 30, 2020. Rent in the amount of \$5,995.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit and pet damage deposit in the amount of \$5,995.00.

The tenancy agreement includes an addendum which contains a clause for liquidated damages. The agreement indicates that if the Tenants breach the fixed term agreement before the end of the original term, the sum of half a month's rent will be paid by the Tenants to the Landlord as damages. The Landlord provided a copy of the tenancy agreement and addendum.

The Parties testified that the Tenants never moved into the rental unit.

The Tenant testified that they were stopped at the US / Canada border and the male Tenant was denied entry into the country. The Tenant testified that they expected it would take 6 - 12 months to deal with the issue, so the Tenants notified the Landlord that they could not move into the rental unit.

Landlord's Claims

Liquidated Damages \$2,997.50

The Landlord testified that the tenancy agreement contains a liquidated damages clause that requires the Tenants to pay half a months rent as liquidated damages for the Landlords costs of re-renting the rental unit, if the Tenants end the fixed term tenancy early.

The Tenant acknowledged that she entered into the tenancy agreement and addendum with the Landlord.

Loss of Rent \$21,465.96

The Landlord testified that he suffered a loss of rent for the months of December 2018; January 2019; February 2019; and 18 days of March 2019.

The Landlord is seeking a monetary order for a loss of rent in the amount of \$21,465.96.

The Landlord testified that on October 11, 2019, when he was notified that the Tenants would not be moving into the rental unit, he immediately attempted to re-rent the unit by advertising it on the company website and on a number of local websites.

The Landlord testified that he initially advertised the rental unit at the same monthly rent that the Tenants were paying. He testified that he advertised the unit at a lower rent of \$5,700.00 in December 2019; and he again lowered the rent to \$5,495.00 in January 2019.

The Landlord testified that he rented the unit to a new occupant to begin on March 19, 2019. The Landlord provided a copy of the tenancy agreement for the new Tenant. The Tenancy agreement is for a fixed term starting on March 19, 2019, and ending on April 30, 2020. The tenancy agreement provides that the monthly rent is \$5,495.00.

In response, the Tenant testified that she drove past the rental property in late January 2019, and noticed that the "for rent" sign had been taken down. She testified that she checked the Landlord's website and she observed that the rental unit was listed as being rented.

In reply, the Landlord confirmed that on January 22, 2019, he entered into a new tenancy agreement for the rental unit, to begin on March 19, 2019. The tenancy agreement provided by the Landlord indicates the agreement was reached on January 22, 2019.

In reply, the Tenant questioned whether or not she should be responsible to pay the rent for the period of time between January 22 to March 18 where the Landlord was no longer taking steps to rent the unit.

Security Deposit

The Landlord is seeking to retain the security deposit and pet damage deposit of \$5,995.00 in partial satisfaction of the claim for loss of rent.

Analysis

Section 7 of the Act states that a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 16 of the Act provides that the rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

Liquidated Damages \$2,997.50

I find that the tenancy agreement contains a term requiring payment of liquidated damages if the tenancy is ended early.

I find that the Tenancy ended early when the Tenants breached the tenancy agreement by failing to move into the rental unit and continue to pay the monthly rent until the end of the fixed term. I find that Landlord is entitled to claim liquidated damages in the amount of \$2,997.50.

The Landlord is granted the amount of \$2,997.50.

Loss of Rent \$21,465.96

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

I find that the Tenants entered into a fixed term tenancy agreement on September 8, 2018, to start on October 1, 2018. The Tenants were unable to move into the rental unit; however, their obligations to comply with the tenancy agreement and Act began on September 8, 2018. I find that the Tenants are responsible to pay the monthly rent until the property could be re-rented.

I find that the Landlord complied with his duty to mitigate the loss by attempting to re-rent the property as soon as the Tenants notified him that they could not move into the unit.

I accept the evidence that the Landlord was able to re-rent the property to a new Tenant at a lower monthly rent of \$5,495.00. I note that the Landlord has not claimed compensation for the difference between the rent he would have received from the defaulting Tenant and what he was able to re-rent the premises for the balance of the 17 months of the fixed term tenancy.

I find that the rental property is in a high monthly rent category and I find that there would be a limited pool of Tenants in the market to rent such a property. I find that for the Landlord to not accept the new tenancy there would be a risk that the rental property would have remained on the rental market for a longer period of time. I find that it is reasonable that the Landlord accepted the new tenancy to begin on March 18, 2019. I find that if the Landlord had declined the opportunity to enter into this new tenancy he could have been found to have failed to do whatever is reasonable to minimize the loss.

I find the Tenants are responsible to pay the rent owing under the tenancy agreement, including the period between January 22, 2019, and March 18, 2019 where the Landlord was no longer advertising the rental unit.

I award the Landlord the amount of \$21,465.96 for the loss of rent that the Landlord suffered for the months of December 2018; January 2019; February 2019; and 18 days of March 2019.

Security Deposit \$5,995.00

I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$5,995.00 in partial satisfaction of the Landlords award for a loss of rent.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord's claims are successful. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Monetary Award

I find that the Landlord has established a total monetary claim of \$24,563.46 comprised of unpaid rent; liquidated damages, and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$5,995.00 towards the award of \$24,563.46, I find that the Landlord is entitled to a monetary order in the amount of \$18,568.46. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants entered into a fixed term tenancy agreement and are responsible to pay the rent owing under the agreement until the Landlord re-rented the property to new Tenants beginning March 19, 2019.

The Landlord was successful in his claims for a loss of rent, and liquidated damages.

I order that the Landlord can keep the security deposit in the amount of \$5,995.00 in partial satisfaction of the Landlords awards.

The Landlord is granted a monetary order for the balance of \$18,568.46.

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 28, 2019

Residential Tenancy Branch