



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord's agent, hereafter, landlord, his assistant, and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the submission requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

The evidence was discussed and the tenant confirmed receiving the landlord's evidence in advance of the hearing. The tenant also said that she had not sent her documentary evidence to the landlord.

I informed the tenant that her documentary evidence was excluded as the Rules require service of evidence to the Residential Tenancy Branch ("RTB") and the other party. I also informed the tenant she could provide testimony contained in her evidence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recovery of the filing fee?

Background and Evidence

It was unclear if this tenancy originally began on February 1, 2013, or February 1, 2014. The landlord stated that it began in 2013; however, the document submitted by the landlord titled "First lease" shows a tenancy beginning on February 1, 2014, for a fixed term ending on January 31, 2015, with a monthly rent of \$850.00. The tenant also paid a security deposit of \$425.00. The undisputed evidence was that the tenant vacated the rental unit on March 30, 2019.

The landlord submitted the following documentary evidence:

- A copy of another written tenancy agreement, for a one year, fixed term beginning on February 1, 2015 through January 31, 2016, with a monthly rent of \$850.00;
- A copy of another written tenancy agreement, for a one year, fixed term beginning on November 1, 2016, through October 31, 2017, with a monthly rent of \$850.00;
- A copy of a Notice of Rent Increase, dated June 26, 2017, which informed the tenant her monthly rent will be increased from \$850.00 to \$881.00, beginning October 1, 2017;
- A copy of a subsequent Notice of Rent Increase, dated October 27, 2017, which informed the tenant her monthly rent will be increased from \$881.00 to \$903.00, beginning February 1, 2018;
- A copy of another written tenancy agreement, for a two year, fixed term tenancy from February 1, 2018, through January 31, 2020, for a monthly rent of \$1,000.00;
- A copy of the landlord's accounting statement showing the rent payments of the tenant from the time period of October 31, 2016, through May 23, 2019. The

statement shows that rent was paid by pre-authorized payments, on the first day of each month. Of note, beginning with the rent payment of February 1, 2018, the amount owed lists \$881.00 and the amount paid was \$881.00, with \$0.00 balance owed. Of further note on the landlord's accounting statement, by pre-authorized payment, the monthly rent owed on February 1, 2019, shows \$903.00, and the payment shows as being \$903.00, with no balance owed.

- A copy of the tenant's written notice of intent to vacate, with reasons, dated March 3, 2019, informing the landlord she was vacating the rental unit on April 1, 2019.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. April rent 2019	\$1,000.00
2. May rent 2019	\$1,000.00
3. Missed rent increase	\$1,622.00
TOTAL	\$3,622.00

April and May 2019, rent-

In support of their application, the landlord submitted that the tenant signed a two year, fixed term tenancy agreement on January 26, 2018, beginning on February 1, 2018, and ending on January 31, 2020, for a monthly rent of \$1,000.00. Instead of staying until the end of the fixed term, the tenant gave notice of an early end of the tenancy, in a written notice dated March 3, 2019, for a move-out date of April 1, 2019.

The landlord submitted that they were unable to find a new tenant for the rental unit until June 1, 2019, causing them a loss of rent for April and May 2019, due to the tenant's breach of the fixed term tenancy agreement.

In response to my inquiry, the landlord submitted that they advertised the rental unit on their company website, which has a lot of "traffic", on Craigslist, and in the newspaper. The landlord confirmed that the rental unit was specifically listed on their website and on Craigslist, but not in the newspaper ads.

When asked, the landlord submitted that the landlord advertised the rental unit with a monthly rent of \$1,175.00.

Missed rent increase-

In support of this claim, the landlord submitted that instead of paying the agreed upon monthly rent of \$1,000.00 listed in the two year, fixed term tenancy agreement, the tenant continued to pay \$881.00 through January 2019, and then \$903.00 for February and March 2019, by pre-authorized payments.

The landlord submitted they are owed the rent deficiency for the months from February 2018, the start of the latest fixed term tenancy agreement through May 2019, when new tenants moved into the rental unit.

The landlord's evidence showed that the tenant's rent was paid by way of pre-authorized payments, for which the landlord was responsible to deduct from the tenant's account.

In response to my inquiry, the landlord said that the owners must have overlooked that the tenant's rent was deficient according to the written tenancy agreement as they owned a large number of properties. The landlord confirmed that the tenant was not notified on the first month the rent was deficient after the fixed term tenancy agreement went into effect, for a monthly rent of \$1,000.00.

Tenant's response-

The tenant submitted that she was told by the building manager that the landlord refused to show the rental unit after she moved out due to the state it was in. In explanation, the tenant submitted that there was a first leak that was never fixed, from 2018, and then a second leak that was never fixed.

The tenant submitted that she gave notice to move out as there was heavy drug use right outside her windows, witnessed by her 6 year old son, and prostitutes in the building. The tenant submitted that the neighbourhood had deteriorated and security was not increased. The tenant submitted there was a recent shooting that scared her son so that he would not sleep in his room.

The tenant submitted that she did not notice that the monthly rent was deficient, beginning with the first month of the fixed term agreement, as she did not pay particular attention to her records.

Landlord's rebuttal-

The landlord confirmed the city placed a warming shelter by the residential property, which the landlord had no control over.

In response to my inquiry, the landlord confirmed that they fixed the leak in the rental unit after the tenant vacated, but could not find in their records when it was fixed.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

April and May 2019, rent-

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on January 31, 2020, and the latest the tenant could legally provide notice to vacate was December 31, 2019.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term as she vacated the rental unit on March 30, 2019.

I therefore find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term pursuant to the written tenancy agreement, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In the case before me, the landlord asserted that it took nearly three months to secure new tenants for the rental unit; however, the landlord confirmed making repairs to the rental unit prior to re-renting, which I reasonably infer to mean that the rental unit was not shown to potential tenants until completed.

The landlord failed to provide evidence when the repairs were started and completed or when the rental unit was advertised. I therefore had no documentary evidence to review to ensure the landlord complied with their obligation to take reasonable measures to minimize their loss for the first month after the tenancy ended.

Also of equal importance, the landlord confirmed that rather than list the rental unit for the same rent as for this tenant, the landlord increased the monthly rent asked for, by \$175.00 per month. I find these actions of the landlord substantiate that they did not take reasonable measures to minimize their potential loss of rent of \$1,000.00 for April and May 2019. It appears the landlord was seeking to profit from the tenant's break of the fixed term agreement, rather than be placed in the same position as before.

Due to the above, I find the landlord submitted insufficient evidence that they took reasonable measures to minimize their loss. As a result, I dismiss their claim for loss of rent for April and May 2019, without leave to reapply.

Missed rent increase-

Rent increases are governed by Part 3 of the Act. Pursuant to section 41(1), a landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord **must not impose a rent increase** for at least **12 months after** whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

(emphasis added)

In this case, I find the landlord's evidence contradictory, inconsistent, and confusing.

During the tenancy, the landlord and tenant signed a fixed term tenancy agreement, ending on October 31, 2017, for a monthly rent of \$850.00; yet, they issued the tenant a notice of a rent increase on June 26, 2017, increasing the monthly rent to \$881.00, beginning on October 1, 2017, in violation of the fixed term agreement for a monthly rent of \$850.00 through October 31, 2017.

In violation of the Act, the landlord gave the tenant another notice of rent increase, four months after the last notice of rent increase, increasing the monthly rent from \$881.00 to \$903.00, beginning February 1, 2018.

Then in January 2018, the parties signed another fixed term tenancy agreement for a monthly rent of \$1,000.00, also beginning on February 1, 2018.

Then, rather than adjust the amount of their pre-authorized payments to reflect the rent increase to \$1,000.00, the landlord continued to deduct the amount of \$881.00 until a year later, on February 1, 2019, when they deducted the amount of \$903.00 for February and March, 2019, apparently to reflect the amount of the notice of rent increase a year earlier, not the fixed term written tenancy agreement.

Rather than notify the tenant of the deficient rent the first month it was due, pursuant to the fixed term written tenancy agreement, the landlord continued to collect \$881.00 for 12 months, then \$903.00 for 2 months, showing that the full rent was paid for all those months in their own records. Also, I find the landlord's failure to notify the tenant of a rent deficiency in the first month, allowing the rent deficiency to build and grow, shows that the landlord failed to take reasonable measures to minimize their loss.

Additionally in this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In other words, in this case, the landlord established a pattern of deducting the amount of monthly rent they themselves believed the tenant owed for 14 months, which allowed the eventual claim to build and grow. I find the tenant relied on the landlord's continued pre-authorized deduction monthly rent payments, without notice to the contrary, to be the proper amount. I find the landlord may not now try to strictly enforce the amount of rent increase claimed by them by the terms of the written tenancy agreement.

Due to the above, I determine by the landlord's actions and conduct, that as they accepted the amount of \$881.00 as monthly rent for 12 months and \$903.00 for 2 months, they may not now to rely on the amount of \$1,000.00 as listed on the written tenancy agreement.

For the reasons above, I dismiss the landlord's claim for the missed rent increase, without leave to reapply.

As I have dismissed the landlord's entire monetary claim, I dismiss their request to recover the filing fee.

Due to the above, I dismiss the landlord's application in its entirety.

As I have dismissed the landlord's application, I order the landlord to return the tenant's security deposit of \$425.00, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$425.00, which is attached to the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$425.00, immediately, and the tenant is granted a monetary order in the amount of that deposit in the amount of \$425.00 in the event the landlord does not comply with this order.

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: September 9, 2019

Residential Tenancy Branch