



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising from this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2017 and was scheduled to end on August 31, 2019. However, the tenancy ended early on February 28, 2019. The tenant was obligated to pay \$4000.00 per month in rent in and at the outset of the tenancy the tenant paid a \$2000.00 security deposit which the

landlord still holds. The landlord testified that the tenant broke the lease and is responsible for the loss of revenue because of their actions. The landlord testified that the luxury market was slow during the winter and they were unable to re-rent the unit until June 15, 2019 for \$3300.00 per month. The landlord testified that applying the security deposit towards March's rent they seek the balance for the month of \$2000.00, \$4000.00 for each April and May, \$2250.00 for June and \$700.00 each month for July and August for a total of \$13,650.00. The landlord also seeks the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that he had split from his partner and that he could not afford the unit any longer. The tenant testified that he was led to believe that he may only have had to cover two weeks of rental loss and is confused as to why it took the landlord so long to rent the unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement and on their company website. However, I find that the landlord has not attempted to fully minimize its losses. The landlord acted slowly in reducing the rental of the rental unit and did not offer a shorter fixed term lease or a month-to-month tenancy, as incentives to try to attract potential tenants. Also, the landlord did not provide evidence as to how often an advertisement was posted and whether it was refreshed to maintain its priority position. As such, I find that the landlord has failed to fully mitigate its losses under section 7(2) of the *Act*.

The landlord is claiming for portions of 6 months of rental loss from March until August, the period during which the property could not be re-rented due to the tenant's breach. The tenant acknowledged that he ended the rental contract early but as he had split from his partner, he had no other option. I find that the landlord did incur losses as a result of the tenants' actions. However, I find that the amount sought is unreasonable for the reasons I've stated above and find that the appropriate amount of compensation is the equivalent of two months of rent. The landlord is entitled to \$8000.00 in rental loss.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$8100.00 I order that the landlord retain the \$2000.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$6100.00. 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 *Residential Tenancy Act*.

Dated: October 25, 2019

Residential Tenancy Branch