



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMNI PROPERTY MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 18, 2019, in which the Landlord sought monetary compensation from the Tenants, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing of Landlord's Application was conducted by teleconference at 1:30 p.m. on November, 5, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence specifically referred to by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord sought monetary compensation for loss of rent pursuant to a fixed term tenancy. The parties signed the tenancy agreement on April 27, 2019. This agreement confirmed that the tenancy was for a two-year fixed term commencing July 1, 2019 ending June 30, 2021. Monthly rent was payable in the amount of \$2,600.00 and the Tenants paid a security deposit of \$1,300.00.

In support of their claim, the Landlord's Agent testified as follows. He stated that the rental unit is in a recently build multi unit apartment building. He further stated there are 200 units in the building in which the rental unit is located, which he described as Phase 2 of a 2 phase development; the other building consists of 294 units.

The Landlord's Agent testified that on May 13, 2019 the Tenant, D.G., advised the Landlord that he may have suffered a stroke. In that email he advised that he was unlikely to be employed.

Introduced in evidence was an email from the building manager, B.N., to the Tenant dated May 21, 2019, wherein B.N. wrote: "Head office wants to hold you responsible for the lease, and I don't". In that email B.N. also asked the Tenant to provide documentation from his doctor.

Evidence provided by the Tenants confirms the Tenants provided the requested medical documentation.

The Landlord's agent confirmed that as of May 21, 2019 the building manager was aware that the Tenants wanted out of the fixed term tenancy obligation.

In terms of advertising the rental unit to others, the Landlord's agent stated that they have leasing agents hosting open houses every day once the building was complete on July 1, 2019, which was the opening day for Phase 2.

The Landlord's agent confirmed that the rental building was specifically built for rentals and all of the units were managed by the Landlord. He further stated that as of the date of the hearing, November 5, 2019, Phase 2 was 85% full; he estimated that as of the date of opening on July 1, 2019 the rental building was approximately 50% full.

The Landlord's agent testified that the subject rental unit is a "premium unit", as it has a desirable floor plan which only four units have, and as such they tend to walk people through it during open houses. He stated that the unit is large, has an additional storage space, is a corner unit, has larger decks and faces the mountains. He further stated that this was the cheapest unit of the four, as it is on the 3rd floor.

The Landlord entered into a new two-year fixed term tenancy agreement for the subject rental unit as of September 16, 2019. A copy of this tenancy agreement was provided in evidence and which confirmed the monthly rent was \$2,550.00. In the within application the Landlord sought compensation for the loss of rent for July, August and September 2019 as well as the \$50.00 per month loss of rent from October 2019 to June 2021 (the original end date of the tenancy which is the subject of this dispute).

In terms of advertising, the Agent stated that they listed the unit on "Zumper" which he stated is an online site specific to apartment rentals and which posts to multiple larger online sites, including: Facebook, Padmapper and Walkscore. The Agent also stated they have boards outside the building, and "Lasso", which is a marketing system which attracts interest and allows people to apply online and then the Landlord sends out "email blasts".

In response to the Landlord's submissions the Tenant, D.G., testified as follows. He stated that on March 18, 2019 he suffered a stroke. The Tenant, D.G., stated that he went to the hospital at the time but it wasn't until June 3, 2019 that he was informed that he indeed had a stroke. He confirmed that they believed it could have been heart disease, and that in May they first speculated that he may have had a stroke.

D.G. was retired and had returned to the film business out of "boredom" from retirement; upon his return he was working in the Grip department. He stated that after the stroke

the labour as a Grip was too difficult and he did less strenuous work, on a part time basis, and as a Dolly Grip.

D.G. stated that it takes time for some of the symptoms of a stroke to emerge. He testified that in May he was trying to work but was only able to work 3 days as he was having pain in his left arm and was having dizzy spells. The Tenant provided in evidence copies of his pay stubs to confirm that he was not able to work.

D.G. confirmed that he talked to the building Manager in May and told him that he did not want to continue with the tenancy as he was only able to work three days in May and as such, he would not be able to pay the rent. The Tenant noted that by telling the Landlord he wanted to cancel the agreement he also gave the Landlord approximately 1.5 months prior to the date the tenancy was to begin.

The Tenant's counsel submitted that the Landlord has a duty to mitigate their losses, yet the only evidence submitted by the Landlord in terms of advertising was an ad on "PadMapper", which was posted some time prior to July 15, 2019. Counsel also noted that there was no evidence as to how many times this particular unit was shown. Counsel submitted that the evidence confirms the Landlord failed to mitigate their losses.

Counsel also stated that the Tenants tried to make this right. They provided ample notice and they attempted to settle matters with the Landlord by offering monetary compensation.

In reply, the Landlord's agent stated that they had a marketing meeting in August wherein they decided to reduce the rental amount. He claimed their marketing budget is "astronomical amount". He further noted that it was a premium unit and to have it re-rented as of September 16, 2019 (with a start date of November 1, 2019) shows that the Landlord did what they could to re-rent the unit. He also noted that "premium units" do not move as quickly as others.

The agent also noted that the Tenant worked 11 days in April, 3 in May and 15 in June. He stated that the Tenant was in fact working and this was simply a case of "buyers' remorse".

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

The Landlord seeks monetary compensation pursuant to a fixed term tenancy agreement. In this respect the Landlord seeks unpaid rent in the amount of \$11,400.00 including four months of rent at \$2,600.00 per month and \$50.00 per month for balance of the two year fixed term as the unit was re-rented at a lower amount.

The evidence before me is that after signing the fixed term tenancy agreement, the Tenant, D.G., discovered that he had suffered a stroke. On May 21, 2019 he informed the Landlord's Building Manager that he would not be able to continue with the tenancy. This was six weeks prior to the intended start date of the tenancy.

The Tenant submitted that the Landlord did not fulfil their obligation to mitigate their losses and did not actively market the rental unit.

The Landlord's agent gave testimony as to the Landlord's attempts to market the rental unit. He stated that once the building was completed on July 1, 2019, they began having regular open houses. He also gave testimony as to the online advertising. The agent stated they have an "astronomical amount" in terms of their marketing budget, however, aside from one online ad, the Landlord did not provide documentary evidence to support their advertising claims.

Like most areas of the province of British Columbia, the community in which the rental unit is located is suffering from a housing crisis. A Landlord who claims a rental unit cannot be rented bears the burden of proving they mitigated their losses by actively advertising the unit to others.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 5--Duty to Minimize Loss* which provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

...
The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

...
If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

...
If partial mitigation occurs, the arbitrator may apportion the claim to cover the period during which mitigation occurred.

In this case the Landlord was informed nearly six weeks prior to the intended start date of the tenancy that the Tenants were no longer able to take the rental unit. This is more notice than most landlords receive on tenants' 30 day notice to end tenancy.

I find the Landlord has provided insufficient evidence to support a finding they mitigated their rental losses as required by section 7 of the *Residential Tenancy Act*. While the Landlord's agent gave oral testimony as to their advertising efforts, they failed to provide supporting documentation such as copies of advertisements, details of any showings of the rental unit or prospective applicants to support their claim that they made their best efforts to rent this unit.

I therefore dismiss the Landlord's claim for unpaid rent for July, August, September and October 2019.

The evidence confirms the unit was rented as of November 2019 for \$50.00 less per month. I find that by lowering the rent the Landlord mitigated their losses for this time period; as such, I find the Landlord is entitled to recover this loss from the Tenants. As

the original term was until June 2021, I award the Landlord 20 months compensation at \$50.00 per month for a total of **\$1,000.00**.

As the Landlord has only been partially successful, I decline their request to recover the filing fee.

Conclusion

The Landlord's claim for monetary compensation for unpaid rent is granted in part. The Landlord is entitled to the sum of **\$1,000.00** for the loss of rent from November 2019 to June 2021. In furtherance of this I grant the Landlord authority to retain the sum of \$1,000.00 from the Tenants' \$1,300.00 security deposit. The balance of \$300.00 shall be returned to the Tenant and to this end I grant the Tenants a Monetary Order in the amount of **\$300.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: December 05, 2019

Residential Tenancy Branch