



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes: MNRL & FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. A Monetary Order in the sum of \$4320 for loss of rent.
- b. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the tenant by mailing, by registered mail to where the tenant resides on September 23, 2019. It was received two days later.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on May 26, 2018 and end on May 31, 2019. The rent is \$1415 per month including parking payable in advance on the first day of each month. The security deposit and pet damage deposit totaled \$932.50. The landlord retained a portion of it and returned the rest. The tenant disputes the amount claimed by the landlord. That issue is not before me in this hearing.

On December 30, 2019 the tenant delivered a notice to the landlord stating he was vacating the rental unit on January 31, 2019 because of the material breach of the tenancy agreement caused by the landlord's inability to provide security for underground parking. In particular the tenant's car had been broken in three times and no action has been taken by the landlord.

The tenant returned the keys on January 30, 2019. The landlord did not arrange a condition inspection until February 6, 2019.

The landlord testified they attempted to re-rent the rental unit but they were not able to do so until April 30, 2019. The landlord failed to provide documentary evidence of their efforts to mitigate this loss including advertisements, showings etc. The landlord testified it took them one month to clean the rental unit. However, they failed to provide photographs as evidence of the condition of the rental property.

The landlord testified there are 240 rental units in the building. Theft from cars in the parking lot of rental properties is a common occurrence. They provided all of their tenants with FOBs.

The tenant testified the landlord was negligent in failing to attempt to rent the rental unit in a timely manner. The vacancy rate in Kelowna at the time was 1.9%. This was a pet friendly unit. The tenant submits the vacancy rate for a pet friendly unit would be lower.

Analysis:

Where a Tenant ends a tenancy prior to the end of the fixed term the tenant is liable to pay the rent for the unexpired portion of the fixed term subject to the provisions of section 45(3) of the Act and the landlord's obligation to act reasonably to lessen the loss as provided in section 7(2) of the Act and Policy Guideline #7

Section 45(3) provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I determined the letter given to the landlord on December 30 failed to meet the requirements of section 45(3) in that it purported to end the tenancy but it failed to give

the landlord a reasonable period of time to correct the failure. Further, the tenant failed to provide sufficient evidence to prove that the landlord was negligent or did something which amounted to a breach of a material term of the tenancy.

However, I determined the landlord failed to present sufficient proof to establish that it did whatever is reasonable to minimize the loss. Section 7(2) of the Act provides as follows:

7(2) 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.

Policy Guideline #7 includes the following:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. **Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable. (my emphasis)**

I determined that the 30 day Notice to End Tenancy given by the Tenant failed to end the tenancy at the end of January as it purported to do as the law does not permit that. However the tenancy ended on January 30, 2019 when the tenants vacated the rental unit and returned the keys. This triggered the obligation on the landlord to mitigate its loss.

It is not reasonable to expect that on January 30, 2019 a landlord could find a new tenant to rent the premises starting February 1, 2019. However, I determined the

landlord failed to conduct a post tenancy inspection in a timely manner when it delayed the inspection to February 6, 2019. The landlord failed to provide sufficient proof to establish reasonable efforts it made to re-rent the rental unit. There was a very low vacancy rate in the area at the time especially given this was a pet friendly rental unit. I determined it is not unreasonable to expect that a landlord could rent the rental unit within 2 weeks. I determined the landlord has established a claim against the tenant for half of a month rent for February in the sum of \$707.50.

The claim for loss of rent for the balance of February, March and April 2019 is dismissed without leave to re-apply.

Monetary Order and Cost of Filing fee

I granted the landlord a monetary order in the sum of \$707.50 plus the sum of \$17 in respect of the filing fee (reduced to reflect the limited success of the landlord) for a total of \$724.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 02, 2019

Residential Tenancy Branch