



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act). The landlords applied for

- a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation; and
- recovery of the filing fee paid for this application.

The landlords and the tenant attended, although the tenant was disconnected early on and re-joined the teleconference hearing.

None of the parties raised any concerns with the service of each other's evidence.

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

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

Issue(s) to be Decided

Whether the landlords are entitled to monetary compensation allowed under the Act and Residential Tenancy Policy Guideline.

Whether the landlords are entitled to recover the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted into evidence by the landlords shows that the tenancy between the landlords and the tenant was set to begin on September 1, 2019, and end on February 28, 2021, monthly rent was set at \$2,500.00, and a security deposit of \$1,250.00 was collected by the landlord.

Upon my inquiry, the landlords said that the end of the fixed term was actually supposed to be February 28, 2020.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent revenue for Sept '19	\$2,500.00
2. Rent deficiency, balance of fixed term, 5 mths, \$100 per month	\$500.00
3. Re-rent levy	\$500.00
TOTAL	\$3,500.00

The landlord submitted that the tenant never moved into the rental unit and they received notice on August 28, 2019, to that effect. Due to the short notice, the landlords submitted they suffered a loss of rent revenue for September 2019.

The landlords submitted that they advertised the rental unit immediately and were able to find new a tenant for a tenancy beginning October 1, 2019. The monthly rent for the new tenant was \$2,400.00 per month, which created a loss of rent revenue of \$100.00 per month for the fixed term originally agreed upon by the tenant, through February 28, 2020.

The landlords submitted they tried to find a new tenant for September 2019, but the potential tenants all had to provide a one month notice to their present landlord. The landlords submitted that they rented their rental unit to the 3rd couple shown the unit.

The landlords submitted that the new tenants are paying \$2,400.00 per month, as they agreed to a 12-month, fixed term, instead of a six-month, fixed term, which would have been for \$2,500.00 per month and the written tenancy agreement.

The landlords submitted a copy of one of the online advertisings.

The landlords submitted that they are also entitled to a re-rent levy, pursuant to the term in the written tenancy agreement which allows for that amount if the tenant moved out “prior to the end of the natural expiration of this Lease”.

The landlords requested to keep the tenant’s security deposit in partial satisfaction of any monetary award granted them.

The landlord’s further relevant evidence was text message communication with the tenant.

Tenant’s response-

The tenant agreed that he was to start the tenancy on September 1, 2019, but due to unforeseen circumstances, he was unable to move in. The tenant did not dispute the amount of monthly rent as claimed or that he paid a security deposit of \$1,250.00.

The tenant submitted that they originally talked about a lease agreement, but he was not aware of the contents of that written tenancy agreement.

The tenant said that the landlords are attempting to force terms in a tenancy agreement of which he was not aware and that he should not be held responsible for those terms.

The tenant said that he agreed to pay on a month to month basis and further said due to the extremely tight rental market and the landlord’s statements, the landlords should have been able to rent the unit for a September 15, start.

Analysis

Based on the oral and written evidence and a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must

compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlords have the burden of proof to substantiate their claim on a balance of probabilities.

Under section 16 of the Act, 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.

In this case, the undisputed evidence is that the parties agreed that a tenancy was to start on September 1, 2019, for a monthly rent of \$2,500.00 and a security deposit of \$1,250.00.

The further undisputed evidence is that the tenant never moved into the rental unit.

I find it reasonable that due to the tenant's short notice on August 28, 2019, the landlords would not have been able to find a new tenant for September 1, 2019. I also found the landlords' explanation that their prospective tenants would have to provide a month's notice to their current landlord to be reasonable.

I therefore find the landlords have provided sufficient evidence to support their monetary claim of loss of rent revenue of \$2,500.00 for the month of September 2019. I grant them a monetary award of \$2,500.00.

What is in dispute is whether the tenant agreed to the fixed term part of the tenancy agreement as it was never signed and he has disputed it.

As the written tenancy agreement was never signed, I cannot determine whether the tenant agreed to the terms in the written tenancy agreement or whether some terms were still being negotiated. For instance, the landlords agreed that there was an error in the fixed term length on the written tenancy agreement.

The tenant submitted that he was not aware of the fixed term length or of the re-rent levy clause in the written tenancy agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

As such, I find the landlords, who have the burden of proof, have not sufficiently proven that the tenant was responsible for monthly rent of \$2,500.00 through February 2020. I find rather, the tenant, in the absence of a written tenancy agreement or undisputed evidence, was on a month to month tenancy. As such, he was responsible to pay the monthly rent of \$2,500.00 for September 2019, which I have now granted the landlords.

As I have found that this tenancy was on a month to month basis, I dismiss the landlords' claim for a loss of rent revenue of \$500.00 through February 2020, the end of their claimed fixed term.

As to the landlords' claim for a re-rent levy in the event the tenant moves out prior to the natural expiration of the Lease, as I have found the tenancy was on a month to month basis, I find there is no natural expiration of the Lease. I dismiss the landlords' claim for \$500.00.

As the landlords have been at least partially successful with their application, I grant the landlords recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlords are entitled to a monetary award of \$2,600.00, comprised of unpaid rent of \$2,500.00 for September 2019 and the filing fee paid for this application in the amount of \$100.00.

At the landlords' request, pursuant to section 72(2) of the Act, I direct them to retain the tenant's security deposit of \$1,250.00 in partial satisfaction of their monetary award of \$2,600.00. I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,350.00.

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

Conclusion

The landlords' application for monetary compensation is granted in part.

The landlords are granted a monetary award of \$2,600.00, and are granted authority to retain the tenant's security deposit of \$1,250.00 in partial satisfaction, and are granted a monetary order in the amount of \$1,350.00 for the balance due.

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: January 14, 2020

Residential Tenancy Branch