Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S FF

Introduction

This hearing was convened in response to an application by the landlord filed on September 01, 2019 under *the Residential Tenancy Act* (the Act) for loss of rent revenue under the tenancy agreement and to recover the filing fee for this matter. The landlord holds the security deposit of the tenancy which they seek to apply in partial satisfaction of the claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties were also provided with opportunity to mutually resolve and settle this dispute and/or all matters of the tenancy to their finality, to no avail. The parties acknowledged exchanging evidence as has been provided to this proceeding. The landlord and tenant were given opportunity to orally provide their respective *relevant* evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount(s) claimed?

Background and Evidence

The undisputed *relevant* evidence in this matter is as follows. The parties entered into a tenancy agreement August 23, 2016. The tenancy agreement states that the tenancy started August 23, 2016, for a fixed period then, moving forward, advanced to a month to month. Under the agreement the monthly rent ($2050.00 > $2210.00) was payable in advance on the 23rd of the month. At the outset of the tenancy, the landlord collected a security deposit in the amount of $1025.00 which the landlord retains in trust. At the

start of the tenancy the parties conducted a mutual condition inspection of the rental unit.

On June 28, 2019 the landlord received the tenant's notice to end the tenancy dated June 24, 2019 in which the tenant states their view to ending the tenancy July 28, 2019, and in which the tenant also provided their forwarding address. The tenant testified they relied on an email of August 21, 2016 in which the landlord states that, *"the lease end date can be any day of the month, including the last day, as long as notice is given in advance".* The landlord's response is that they were stating the obvious, in that a tenant may vacate when they desire, provided they give "advance notice" in accordance with the Act. The tenancy ended when the tenant vacated July 18, 2019 and the landlord effectively regained possession of the rental unit.

The landlord argued that despite the tenant's departure from the rental unit they did not accept the tenant's notice to end as effective notice ending the tenancy or the tenancy agreement, however they accepted the tenant's notice ending the tenancy the following month, as the tenant's notice did not comply with the requirements set out in Section 45(1) of the Act; and, to the landlord the tenant's notice was therefore ineffective to end the tenancy prior to August 22, 2019. The landlord stated they expected the rent to August 22, 2019; however, the tenant did not satisfy it. Therefore, by their application the landlord is seeking loss of revenue for the period July 23 to August 22, 2019 in the amount of $2210.00.

Evidence in this matter is that upon the tenant vacating and relinquished possession of the rental unit, the landlord did not conduct a move out inspection. The tenant requested the landlord for a move out inspection several times however the landlord declined, stating that their circumstances did not allow them to conduct an inspection and they would not conduct an inspection until the latter portion of August 2019. The result was that the move out inspection did not occur.

The tenant argued that the landlord's email dated August 21, 2016 serves to amend the parties' written tenancy agreement dated August 23, 2016, with which the landlord disagreed.

The tenant also argued that given the circumstances the landlord failed to show what efforts were made to mitigate or minimize potential revenue loss.

Analysis

The full text of the Act, sections of the Act stated herein, and other referenced resources, can be accessed via the Residential Tenancy Branch website at: ***www.gov.bc.ca/landlordtenant***

On preponderance of the relevant evidence in this matter, I have reached a Decision upon the following findings.

I find that the ***Parol evidence rule*** is a legal principle that preserves the integrity of written documents and written agreements (especially if such instruments are signed) by prohibiting the parties from attempting to alter the meaning of the written document through the use of prior and contemporaneous oral or written declarations that are not referenced in the written signed document. As a result, I find that the referenced email of August 21, 2016, purporting an amendment to the later written and signed tenancy agreement of this matter does not operate to amend that agreement and is of no effect.

Pursuant to **Section 45(1)** of the Act, I find that the tenant's notice to end in this matter does not comply with the requirements set out therein. None the less, a relevant portion of **Section 53** of the Act states as follows,

> **Incorrect effective dates automatically changed**
>
> **53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
>
> (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

It must also be noted that in its relevant part to this matter **Section 44(1)(d)** of the Act states **(emphasis mine),**

> **How a tenancy ends**
>
> **44** (1) A tenancy ends only if one or more of the following applies:
>
> **(d) the tenant vacates or abandons the rental unit;**

As a result of the above, I find that the effective date of the tenant's notice to end is automatically changed to August 22, 2019, and, that the tenancy ended July 18, 2019 upon the tenant vacating the rental unit.

I find the Act does not attach a penalty for failing to provide an effective notice to end nor automatically entitles the landlord to a resulting loss of revenue. However, **Section 7** of the Act *does provide* as follows in respect to claims of loss of revenue such as the landlord's application in this matter.

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

The inherent test of **Section 7** is that the landlord's claim for loss of revenue requires that the landlord must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the tenant in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the landlord followed their statutory duty pursuant to Section 7(2) to do whatever is reasonable to minimize or mitigate the loss.

In this matter I find the landlord has not offered or presented sufficient evidence of mitigation or what reasonable steps were taken to avert, mitigate or minimize the claimed loss of revenue from July 23 to August 22, 2019 after the tenants vacated. As a result, their claim for loss of revenue of $2210.00 must fail and is **dismissed.**

Residential Tenancy Policy Guideline #17, in relevant part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

The Arbitrator will Order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the

Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Further, Residential Tenancy Policy Guideline 17 goes on to state,

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

In this matter the landlord filed their application requesting the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been dismissed it is appropriate that I Order the return of the tenant's security deposit.

In respect to a deposit and the above, I find **Section 38(1)** of the Act provides that the landlord **must** return the deposits of the tenancy **or** apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. In this matter I find the landlord filed their application on September 01, 2019 after receiving the tenant's forwarding address in writing prior to the tenancy ending on July 18, 2019. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days as prescribed by Section 38(1) of the Act. As a result, the Act then prescribes pursuant to **Section 38(6)** that the landlord **must** pay the tenant *double* the amount of the security deposit.

The landlords currently hold the security deposit in the amount of $1025.00 and I find that they are obligated under **Section 38** to return *double* this amount. In this matter the amount which is doubled is the original deposit. Therefore, I return to the tenant the amount of **$2050.00**.

I grant the tenant a Monetary Order in the amount of **$2050.00**. If necessary, this Order may be registered in the Small Claims Court and enforced as an Order of that court.

Conclusion

The landlord's application is dismissed.

The tenant is given a monetary Order in the above terms.

This Decision is final and binding.

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 08, 2020

Residential Tenancy Branch