



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both landlords attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 16, 2019. The landlords provided the Canada Post Customer Receipt Tracking number in their direct testimony as confirmation (noted on the cover of this decision). The landlords confirmed that no documentary evidence was received from the tenant.

I accept the undisputed affirmed testimony of the landlords and find that the tenant was properly served as per sections 88 and 89 of the Act via Canada Post Registered Mail on October 16, 2019. Pursuant to Section 90 of the Act, although the tenant failed to attend and participate in the hearing, the tenant is deemed served.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the tenants entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 4, 2019 on a fixed term tenancy ending on March 4, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 24, 2019. The monthly rent was \$1,550.00 payable on the 1st day of each month and a security deposit of \$775.00 was paid.

The landlords seek a monetary claim of \$7,750.00 which consists of 5 months of lost rental income at \$1,550.00 per month. The landlords clarified that the tenant vacated the rental unit on October 6, 2019 and as such, seek \$1,550.00 in unpaid rent for October 2019 and \$6,200.00 for the loss of rental income (4 months at \$1,550.00/month from November 2019 to the end of February 2020.

The landlords provided undisputed affirmed testimony that on October 6, 2019 the tenant was seen by the landlord, A.R. vacating the rental unit with all her belongings. The landlords stated that no notice to end the tenancy was received from the tenant at any time. The landlords stated the tenant verbally provided a forwarding address (noted as the tenant's mailing address for service on this application) which the landlord, A.R. wrote down. The landlords stated that the rental unit was advertised for "immediate occupancy" between October 9 – 12, 2019 using two online platforms. The landlords stated that as of the date of this hearing, the landlord had shown the rental unit 10-12 times, but with no applicants. The landlords stated that for December 2019, the advertised rent was reduced to \$1,500.00 per month. The landlords stated that with the lack of interest in their rental unit, the advertised rent was again reduced to \$1,450.00 per month for January 2020. The landlords further stated that the most recent ad expired at the end of January 2020 and that a new advertisement for February had yet to be posted. The landlords stated that there was no point advertising the unit for rent for February as no new showings were made or were there any new rental applicants in January 2020. The landlords confirmed that as of the date of this hearing the landlords' rental unit remains empty and un-rented.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of the landlords and find that the tenant vacated the rental unit on October 6, 2020 and failed to provide proper 1 months' notice to end tenancy to the landlords.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, 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...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed...

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 reasonable economic rent... 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.

The landlords provided undisputed affirmed testimony that between October 9-12, 2019 online advertisements were placed on two platforms advertising the rental for “immediate” occupancy at \$1,550.00 per month. The landlords stated that for December 2019, the monthly rent advertised was reduced to \$1,500.00 per month. The landlords also stated that for January 2020, the monthly rent advertised was reduced a second time to \$1,450.00. The landlords provided undisputed affirmed testimony that 10-12 showings were made from October 9-12, 2019 up to the end of January 2020 with no rental applicants. The landlords confirmed that as of the date of this hearing the rental unit remains empty.

I find based upon the above noted undisputed affirmed testimony that the landlords have established a claim for unpaid rent of \$1,550.00 for October 2019. The tenant failed to pay any rent for October 2019 before vacating the rental unit without notice on October 6, 2019.

I find based upon the above noted undisputed testimony that the landlords have established a claim for loss of rental income of \$4,650.00 for the 3-month period November 2019 to January 2020.

On the landlords request for loss of rental income of \$1,550.00 for February 2020, I find that the landlords failed to mitigate any losses by advertising the rental unit for rent. The landlords provided undisputed affirmed testimony that the most recent advertisement expired at the end of January 2020 and that as of the date of this hearing no new advertisement for the rental has been posted. I find that the landlords failed to mitigate the loss of rent for February 2020 as it cannot be said that there was a loss of rental income if they did not even attempt to rent it for February 2020. This portion of the landlords’ claim is dismissed.

The landlords have established a total monetary claim of \$6,200.00. The landlords having been successful are also entitled to recovery of the \$100.00 filing fee. I authorize the landlords to withhold the \$775.00 security deposit currently held in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$5,525.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: February 07, 2020

Residential Tenancy Branch