



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 9, 2019, wherein the Landlord requested monetary compensation from the Tenant for unpaid rent, authority to retain the Tenant's security deposit, and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on February 4, 2020. 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced 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 Tenant for unpaid rent?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

In support of his claim the Landlord testified as follows. He stated that the tenancy began September 1, 2018 and was to end on August 31, 2019. Monthly rent was \$1,750.00, plus \$90.00 for utilities. The Tenant paid a security deposit in the amount of \$875.00. The rental unit is a two-bedroom basement suite of approximately 800 square feet. The Landlord resides in the upper unit and the rental unit is in the basement.

The tenancy agreement was not provided in evidence by either party, although the Tenant confirmed he had a copy in front of him during the hearing. The Landlord read section 5 as follows:

Section 5: the tenancy begins on the 1st day of September 2018. The tenancy is for a fixed length of time 12 months ending on 31st day August 2019.

The Landlord testified that on March 28, 2019, the Tenant informed the Landlord that he had to move from the city in which the rental unit was located for financial reasons.

The Landlord claimed he was not able to re-rent the unit until August 14, 2019.

In terms of advertising, the Landlord stated that they advertised on Craigslist from April 27 continuously. He confirmed that was the only place they advertised. He also stated that they responded to some accommodation wanted ads as well.

The Landlord stated that the rental unit is not a legal suite. The Landlord also claimed that he is limited by the insurance on his building to having only two people in the basement suite; he did not have this in writing and stated that the insurance company informed him of this verbally.

The Landlord testified that he advertised the unit at the \$1,750.00. He stated that he received 52 responses from prospective tenants: of those 20 "went away", and the

Landlord did not hear anything further; 16 wanted more than two people and were therefore not acceptable to the Landlord; 8 were potential tenants for whom they arranged viewings, but only 4 showed up for the viewings. The first showing was May 4, 2019, the second was on May 15, 2019, third was on July 4, 2019, and the fourth was on August 13, 2019.

The Landlord confirmed the and his wife were out of town from June 1 – June 22, 2019 but did respond to requests by email and offered to show the suite to others on their return. He did not hire a property manager in his absence.

In response to the Landlord's claims the Tenant testified as follows. The Tenant stated that after he gave notice to end his tenancy on March 28, 2019, he immediately started advertising the rental unit on Craigslist to ensure the unit was re-rented as soon as possible. The Tenant stated that he and his roommate are student athletes and were very busy at the end of March such that it took them 11 days to get the ad up. They knew that they would get responses right away as the city in which the rental unit is located has the lowest occupancy rate in the country. He stated that he got 13 responses back right away and set up viewing times for the rental unit. He confirmed he had three viewings on April 24, 2019. The first were a family, one man and a couple. The family were very interested and were willing to rent right away. The man was not interested, and the couple said they would get back to them.

The Tenant then contacted the Landlord and told the Landlord that he had a family who were interested in moving in right away; in response the Landlord said he cannot have more than two people in the rental. The Tenant stated that the Landlord never said this before.

The Tenant provided in evidence copies of email communication he had with prospective tenants to the Landlord. The Tenant stated that in May he was still receiving emails from people who were interested in the rental unit. The Tenant stated that he was concerned about showing the rental unit to others, as the Landlord repeatedly stated that the tenants would have to be "acceptable to him" yet did not indicate what was in fact acceptable.

The Tenant also noted that the Landlord then stated that he was going to be away for much of May and all of June 2019. This was communicated to the Tenant by email on April 28, 2019; a copy of which was provided in evidence and reads as follows:

"We fully understand our obligations to minimize any loss we may incur that results from a breach of the lease agreement. We are more than willing to do what is reasonably

possible to minimize the amount of loss. We suggest that you continue to advertise the suite. We can also keep our keys open for suitable prospective subtenants in the accommodation wanted ads when we are in town. We are willing to help you by showing the suite when we are in town to prospective renters that you or we become aware of. To do this we would, of course, need permission from you to enter the suite. However, please understand that we will be away much of May and almost all of June.”

The Tenant stated that he moved out at the end of April 2019 and did not hear from the Landlord again until he received the Landlord’s Application materials in October 2019.

In reply to the Tenant’s testimony and submissions the Landlord stated that at no time did he receive any information from the Tenant as to potential tenants except the family that were willing to move in the next day.

The Landlord also confirmed that he did not advise the Tenant as to what was “acceptable” in terms of new tenants as it was his expectation he would receive names from the Tenant and then he would vet them.

The Landlord also noted that it was his intention to be away most of May, but they had to deal with the suite and therefore were not gone as much as they had hoped.

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.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The parties confirmed that they entered into a fixed term tenancy agreement from September 1, 2018 to August 30, 2019.

For financial reasons the Tenant ended his tenancy on April 30, 2019. He gave notice to the Landlord to end his tenancy on March 28, 2019.

As the tenancy was for a fixed term, the Tenant is potential liable for the payment of rent until the end of the fixed term. That said, and as provided for in *Residential Tenancy Branch Policy Guideline 3—Claims for Rent and Damages for Loss of Rent*, the Landlord's claim for unpaid rent is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The rental unit is located in a city with one of the lowest vacancy rates in Canada. The situation is so bleak for prospective tenants that the city has been described as being in a rental housing crisis. In such markets, rental units are in high demand and seldom do rental units remain vacant for any period of time.

The Landlord claims he was not able to re-rent the unit until August 14, 2019, some three and a half months after the tenancy ended.

The evidence confirms the Landlord was away for the month of June and part of May 2019. The Landlord did not clarify how much of May he was away, only to say it was

less than he had originally intended. The Landlord did not hire a property manager in his absence.

The Tenant testified that he advertised the rental unit and received considerable response from prospective tenants. He also testified that he found a family who were willing to move in immediately. This testimony was supported by the documentary evidence supplied by the Tenant.

In response the Landlord informed the Tenant that only two people could live in the rental unit. He claimed this limitation was imposed by his insurance company. He did not provide any documentary evidence to support this claim. The Landlord also informed the Tenant that the prospective tenants had to be acceptable to him; he conceded he did not provide the Tenant with any clarification as to what was and was not acceptable, save and except for his two-person limit.

The Landlord testified that he also had numerous families show interest in the rental unit, but they were also “not acceptable” to him.

As noted previously, a party claiming monetary compensation from the other is required to mitigate their losses. In this case, I find the Landlord has failed to do so. I accept the Tenant’s evidence that he actively marketed the rental unit and received numerous responses to his advertisement about the rental unit. I also accept his evidence that he had a family willing to move in right away.

In times of such low vacancy rates, rental units are in high demand and are seldom vacant. The Landlord testified that he first showed the rental unit to prospective tenants on May 4, 2019, five weeks after the Tenant gave notice to end his tenancy. He did not explain why he did not show the rental unit in April. There was also no evidence to suggest the Landlord attempted to re-rent the rental unit at a lower rate to ensure it was rented out as soon as possible. In the circumstances I find the Landlord did not take reasonable steps to minimize his losses.

I also find it likely the Landlord’s absence from the city in which the rental unit is located impacted his ability to market and show the rental unit. Further, and while it may be his preference, I am not satisfied the Landlord was prohibited from renting the unit to a small family of two parents and a child.

I therefore dismiss the Landlord's claim for monetary compensation for loss of rent. As the Landlord has been unsuccessful, I dismiss his claim for authorization to retain the Tenant's security deposit and recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed.

The Tenant is entitled to return of his security deposit in the amount of **\$875.00**. In furtherance of this my Decision, I grant the Tenant a Monetary Order in the amount of **\$875.00**. 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: February 11, 2020

Residential Tenancy Branch