



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MONDELIVING INTERNATIONAL
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 24, 2019, by which the Landlord sought monetary compensation in the amount of \$13,175.00 from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on March 17, 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee paid for the Application?

Background and Evidence

The Landlord's Representative, L.G., testified as follows. He confirmed that this fixed term tenancy began April 1, 2018. It was renewed for a further fixed term and was to end on March 31, 2020. The tenancy ended prior to the fixed term on September 30, 2019.

In the within action the Landlord sought monetary compensation for the following:

Unpaid rent for 6 months at \$1,950.00	\$11,850.00
Marketing fees	\$975.00
Filing fee	\$100.00
TOTAL CLAIMED	\$13,075.00.

The Landlord advised the rental unit was never re-rented.

In support of the claim for unpaid rent the Landlord claimed to have marketed the rental unit "on craigslist and kijiji and some other websites".

The Landlord provided a copy of an ad for the rental unit indicating it was advertised for \$2,100.00. The ad specified the rental unit was a 500 square foot one-bedroom unit. This ad was dated September 26, 2019. The Landlord did not provide any other documentary evidence to support their claim that they advertised the rental unit.

L.C. confirmed that since the unit has been vacant, they reduced the asking price. He said this occurred in October. He claimed it was reduced to \$1,900 or \$1,950.00. He was not able to testify as to when this occurred.

The Landlord also claimed \$975.00 in marketing costs. L.C. stated that they used a number of agents to help market the unit. He noted that an agent will take ½ a month's rent, \$975.00, if they rent the unit out. L.C. conceded that they have not incurred this cost as the rental unit has not been re-rented.

The Landlord also claimed the cost of \$150.00 for the cost to replace a sliding door. In support they provided a photo of the door. L.C. stated that the door was "falling from the hinge". He stated that he was not able to reattach the door.

In response to the Landlord's claims the Tenant, C.C., testified as follows. He confirmed that he signed the tenancy agreement as the Tenants were his employees

and were new to Canada and having difficulty finding rental accommodation. He further confirmed that he did not live in the rental unit and that there were only two people living in the rental unit, the Tenant, M.H. and his girlfriend H.L., after which H.L. moved out and V.A. moved in with M.H.

C.C. stated that they gave notice to end the tenancy on July 31, 2019 for an end to the tenancy on August 31, 2019. Documentary evidence supported this testimony. C.C. stated that L.C. would not acknowledge this end to tenancy following which C.C. provided the Landlord with the September rent.

C.C. stated that the Landlord told the Tenants to market the rental unit. C.C. stated that they tried to market the rental unit, but the amount charged by the Landlord is too high. C.C. also stated that it is the Tenants' position that the Landlord did not adequately market this property and should have lowered the asking price to attract renters.

C.C. stated that because there were so few rentals available at the time, they first rented the unit in 2018, they overpaid.

C.C. also testified that the rental unit was not in good shape. He noted that there is a big hole in the laminate flooring. C.C. stated that it was "livable" but not "impressive".

C.C. confirmed that he paid a \$975.00 security deposit. C.C. further confirmed that the Tenants provided their forwarding address to the Landlord.

In response to the Landlord's claim that the sliding door needs to be replaced, C.C. stated that when they moved in the door was already broken. C.C. confirmed they bought the replacement hinge and believe that it could be reattached.

C.C. also noted that the rental unit was sold October 21, 2019. In support he provided a copy of the real estate listing. Notably this document confirms the property was listed for sale on September 17, 2019.

In reply to the Tenants' claims, L.C. stated that they listed the rental unit in "mid October" or "before that". He stated that the property sold with a completion date of January 21, 2020.

L.C. stated that the rental unit was not listed for sale at the time the tenancy ended.

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.

After consideration of the testimony, evidence and submissions of the parties, and on a balance of probabilities I find as follows.

While a tenant is potentially liable for all rent due pursuant to a fixed term tenancy agreement, a landlord has an obligation to mitigate their losses by attempting to re-rent the unit as soon as they are able.

I accept the Tenant's testimony that they gave notice to end the tenancy on July 31, 2019 for an effective date of August 31, 2019. The documentary evidence submitted by the Tenants confirms that by September 17, 2019 the Landlord had already listed the rental unit for sale.

The evidence also confirms that on September 26, 2019, the Landlord advertised the rental unit, at \$2,100.00, some \$150.00 more than the amount paid pursuant to the fixed term.

Guidance is provided by the *Residential Tenancy Branch Policy Guidelines. Residential Tenancy Branch Policy Guideline 3. Claims for Rent and Damages for Loss of Rent* provides in part as follows:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

I find the Landlord attempted to re-rent the premises at a greatly increased rent and placed the property on the market for sale. As such, I find the Landlord failed to mitigate their losses.

The Landlord also only provided a copy of one listing in evidence. Although the Landlord's representative testified that they reduced the asking price, he was not able to say when this occurred or what amount. I am unable to accept his testimony in this regard. In all the circumstance, I find the Landlord failed to actively market the rental unit.

The rental unit had an accepted offer as of October 21, 2019 with a closing date on January 21, 2020. I find it highly unlikely the Landlord would have made any real effort to rent the unit during this three-month period, and even more unlikely a prospective tenant would agree to such a short term. The evidence before me confirms my suspicions as there was no evidence before me of advertising (save and except for one ad in September 2019), showings, or attempts to reduce the asking rental amount.

More problematically, the Landlord failed to disclose that the rental unit had sold, and only provided this information after the Tenant had testified. In their claim, the Landlord sought unpaid rent for six months, including rent for the time period: January 22-March 31, 2020 when the Landlord did not even own the rental property. Clearly the Landlord did not suffer a loss of rent during this time as the Landlord would have no ability whatsoever to rent the property to others.

For these reasons I dismiss the Landlord's claim for unpaid rent.

The Landlord also claimed \$975.00 in advertising costs when no such costs were incurred. This portion of their claim is also dismissed.

The Landlord also claimed the cost to repair a sliding door. The Landlord's agent testified that he tried to fix the door but was unsuccessful. There was no evidence that the Landlord made any other efforts to reattach the door to the sliding mechanism. I find the Landlord has also failed to mitigate this loss.

I therefore dismiss the Landlord's claim in its entirety. As the Landlord has been unsuccessful, their claim for recovery of the filing fee is similarly dismissed.

The Tenants are entitled to return of their security deposit in the amount of \$975.00.

The evidence confirms the Tenants provided their forwarding address to the Landlord by text message. While this is normally insufficient, the Landlord acknowledge receipt of the Tenant's address. I was not provided with any information as to the date this text message was sent, as such I make no finding as to whether or not the Landlord complied with section 38(1).

Conclusion

The Landlord's claim is dismissed.

The Tenants are entitled to return of their security deposit in the amount of \$975.00 pursuant to section 38 of the *Act*. In furtherance of this I grant the Tenants a Monetary Order in the amount of \$975.00. 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: March 18, 2020

Residential Tenancy Branch