



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC SUNRISE TRADELINKS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL, MNSD, MNDCT, FFT

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to the return to all or a portion of the security deposit?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. AR testified that the tenancy began on May 1, 2018 and ended on December 14, 2019. AR testified that they paid the rent in full for the month of December 2019. The tenants were obligated to pay \$1790.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$895.00 security deposit. AR testified that the landlord returned \$776.56 of the deposit but held back \$118.44 without the tenant's authorization. AR testified that after the first year's lease expired, they wanted a shorter term lease or a month to month lease. AR testified that they were forced to sign a one year term. AR testified that they paid a \$945.00 property management fee to re-rent the unit along with a \$50.00 fee for advertising. AR testified that they only broke the lease as the landlord was not flexible in allowing a month to month agreement.

The tenants are applying for the following:

1.	Property Management Fee	\$945.00
2.	Advertising	50.00
3.	Cleaning Charge	118.44
4.	Filing Fee	50.00
5.		
6.		
	Total	\$1163.44

The landlord gave the following testimony. The landlord testified that the parties negotiated and entered into a second fixed term agreement and that the tenants were not forced into signing it. The landlord testified that the tenant signed off on the move out condition inspection report that the balcony, oven and windows were dirty. The landlord testified that a small and reasonable amount was charged to the tenants. The landlord testified that the property management fee was part of the agreement if the tenants broke the lease along with the advertising cost. The landlord testified that they were unable to rent the unit for January 2020 and seek the loss of revenue of \$1790.00.

Analysis

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 arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I first address the tenants claims and my findings as follows.

Property management fee and advertising

The tenants signed a fixed term agreement that clearly shows that if they break the lease the landlord can impose the liquidated damages clause or "property management fee", and advertising cost. The tenants signed two separate agreements knowing full well that this clause was part of the agreement. The tenants only questioned it months after they moved out and felt that the landlord is not entitled to this because of the landlord's lack of flexibility in terms of the length of the tenancy agreement. The tenants have not provided sufficient evidence to show why they should be reimbursed this cost as they had the ability to negotiate terms. Based on the above and on a balance of probabilities, I dismiss this portion of the tenants claim.

Cleaning

The landlord submitted a copy of the move out condition inspection report that shows the areas that were left dirty. The tenant signed off on that report and agreed to the noted condition. The landlord provided sufficient evidence to show that the balcony,

oven, and windows were not sufficiently clean and that the amount charged to the tenant is reasonable and appropriate, accordingly; I dismiss this portion of the tenant's application.

The tenant has not been successful in their claim.

I now address the landlords claim as follows.

Rent Loss

I find that the landlord and tenants entered into a fixed term tenancy for the period from May 1, 2019 to April 30, 2020. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on December 15, 2019, prior to the end of the fixed term. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for January 2020 rent loss of \$1,790.00, without leave to reapply. I find that the landlord failed to provide sufficient documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide sufficient documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. The landlord was unaware of what the initial rental price was or when it was reduced. The landlord did not provide sufficient flexible terms to attract more inquires such as a month to month tenancy and only advertised on one website.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

As neither party has been successful, I hereby dismiss each of their claims for the recovery of the filing fee. Both parties applications are dismissed in their entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

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: July 02, 2020

Residential Tenancy Branch