



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord, the listed tenant, and the other tenant during the tenancy, LL, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their affirmed testimony and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord's application showed a monetary claim of \$1,425; however, the landlord's evidence did not include a detailed calculation of her claim as required by the Act and Rule 2.5. In her application, she explained that she wanted to keep the tenant's security deposit to satisfy all claims against the tenant.

In response to my inquiry, the tenant said he understood the nature of the landlord's application, despite the lack of a detailed calculation. I therefore proceeded to hear the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of November 15, 2019, a fixed term through May 15, 2020, monthly rent of \$2,850, due on the 15th day of the month, and a security deposit of \$1,425 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenant's security deposit, having made this claim against it.

In support of her application, the landlord submitted that on February 14, 2020, she received notice from the tenants that they would vacate the rental unit by March 14, 2020, two months prior to the end of the fixed term in the tenancy agreement. The landlord submitted that the tenants turned in the keys to the rental unit on March 14, 2020, along with their forwarding address.

The landlord submitted after receiving several complaints from the tenants about the noise, the smells and her mail, she began asking the tenants if she should advertise the rental unit, but they never responded.

The landlord submitted she is entitled to keep the tenant's security deposit as they did not fulfill their lease as well as other costs, such as cleaning, parking and strata fees.

The landlord submitted that this insufficient notice caused a loss of rent revenue for the final two months of the tenancy.

In response to my inquiry, the landlord confirmed not having made any attempts to advertise the rental unit after receiving the tenant's notice that they were vacating the rental unit on March 14, 2020. The landlord explained that her mother had died and that her sister intended to move into the rental unit after the tenants vacated at the end of the fixed term, May 15, 2020.

While the tenancy continued after the end of the fixed term, on a month-to-month basis, the landlord assumed the tenants would be vacating due to their complaints. The landlord submitted that she believed no one would want to rent out a place for just one or two months.

Tenant's response –

The tenant submitted that they entered into the tenancy agreement due to the false pretenses of the landlord. The tenant submitted that the landlord provided false and misleading information about the level of noise heard in the rental unit, other disturbances, and the odours entering the rental unit from the sushi restaurant in the lower level of the residential property, a condo building.

The tenant submitted that their health continued to deteriorate during the tenancy, as LL has high sensitivity to noises and odours. The tenant submitted that they did not have any quiet enjoyment of their rental unit at all during the tenancy, and were finally reduced to using the extra bedroom and bathroom, as the problems were most prevalent in the master suite.

The tenants denied leaving the rental unit unclean.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, Residential Tenancy Regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As to the issue of loss of rent revenue, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

Therefore, the tenants were obligated to pay the monthly rent until the end of the fixed term, here, May 15, 2020, subject to the landlord's obligation to do whatever was reasonable to minimize her loss.

In respect of the landlord's claim for loss of rent revenue, I must consider whether the landlord has sufficiently mitigated her damages.

The evidence shows that the landlord failed to place any advertisements or make any attempts at all to re-rent the rental unit. While the landlord argued that no one would want to rent a rental unit for one or two months, I still find placing advertisements on free, online websites would have demonstrated at least a minimal, reasonable measure to mitigate her loss. The landlord had no proof that she would not have been successful in re-renting the rental unit.

I therefore find the landlord failed to meet her obligation under section 7(2) to do whatever is reasonable to minimize her loss.

As a result, I dismiss her claim of \$1,425 and her request to recover the filing fee.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I order the landlord to return the tenant's security deposit of \$1,425, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1,425, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$1,425, immediately, and the tenant is granted a monetary order in the amount of that deposit of \$1,425 in the event the landlord does not comply with this order.

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: August 3, 2020

Residential Tenancy Branch