



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1035417 BC LTD DBA THE HEIGHTS
APARTMENTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On January 19, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. The parties were informed that recording the hearing is not permitted.

Preliminary and Procedural Matters

The Landlord stated that the Landlords name has changed and asked that the Application and Decision reflect the new name. The Tenant agreed that the change could be made. The Landlord’s application is amended accordingly.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent?
- Can the Landlord keep the security deposit towards the loss of rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 21, 2020 as a one-year fixed term tenancy to continue until March 30, 2021. Rent in the amount of \$1,785.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$887.50. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant broke the fixed term tenancy agreement by moving out of the rental unit on October 31, 2020, prior to the end of the fixed term agreement.

The Landlord testified that they advertised the rental unit and found another Tenant to occupy the rental unit starting January 8, 2021 at a lower monthly rent of \$1,710.00.

The Landlord is seeking to recover a loss of rent suffered for the months of December 2020 and January 2021. The Landlord stated that the Landlord offers new tenants a free month rent as an incentive to sign a one-year lease due to the current state of the market. The Landlord testified that the new tenant did not have to pay any rent for December 2021 and the Landlord suffered a loss of December 2021 rent. The Landlord provided a copy of the tenancy agreement for the new tenant that indicates the tenancy begins on February 1, 2021 at a monthly rent of \$1,710.00.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$3,570.00.

The Landlord is also seeking to recover the difference in rent that was lost due to having to rent the unit at a reduced monthly amount. The Landlord is seeking to recover \$150.00 which is \$75.00 per month for a two-month period.

In reply, the Tenant provided testimony agreeing that he ended the fixed term tenancy early. The Tenant stated that he felt that the Landlord was not meeting their obligations to him.

Security Deposit

The Landlord applied to keep the security deposit of \$887.50 towards November 2020 rent. The Landlord stated that the tenant signed the security deposit over to the Landlord on October 31, 2020.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides:

If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the Tenant breached the fixed term tenancy agreement by vacating the rental unit on October 31, 2020 prior to the end of the tenancy. I find that the Tenant is responsible to pay the rent owing under the tenancy agreement until such time a new tenant was found.

I accept the Landlord's evidence that they mitigated against loss by advertising the rental unit. I accept that the Landlord investigated the current rental market to determine a reasonable amount of rent. I accept that the Landlord had to reduce the monthly rent by \$75.00 per month in order to re-rent the unit.

I find that the Landlord entered into a tenancy agreement with a new tenant that officially began on February 1, 2021. While the Landlord permitted the new tenant to move into the unit early, I find that the Landlord did not receive any rent from the new Tenant for January 2021 and the early occupation was provided as an incentive to the new tenant. I find that the rental unit would have been vacant in any event and this arrangement does not affect the Landlords claim or mitigation.

The Tenant's submission that the Landlord was not making him feel wanted and meeting obligations does not rise to a level which would permit the Tenant to end the tenancy for a breach of a material term of the tenancy agreement.

I find that the Tenant is responsible to pay the Landlord \$3,570.00 for a loss of December 2020 rent and January 2021 rent. I also find that the Tenant is responsible to pay the difference in rent of \$75.00 for February 2021 and \$75.00 for March 2021.

I find that the Tenant permitted the Landlord to keep the security deposit of \$887.50 towards November 2020 rent. The Landlord is authorized to keep the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,820.00 comprised of \$3,720.00 for a loss of rent and the \$100.00 fee paid by the Landlord for this hearing.

The Landlord is granted a monetary order in the amount of \$3,820.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant breached the fixed term tenancy agreement by moving out early and is responsible to pay for the Landlords loss of rent.

I grant the Landlord a monetary order in the amount of \$3,820.00.

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: May 21, 2021