



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Sterling Furnished Suites Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("RTA"), for a monetary order for unpaid rent of \$3,400.00; and to recover their \$100.00 Application filing fee.

Two advocates for the Tenant, L.S. and D.M. ("Advocates"), and one agent for the Landlord, K.S. ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Advocates and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Agent provided her email address in the Application and confirmed it in the hearing. The Advocates provided their email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the name of the company representing the owner, so I have amended the respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on February 1, 2023, and was scheduled to run to January 31, 2024. The Tenant was obliged to pay the Landlord a monthly rent of \$3,400.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,700.00, and no pet damage deposit.

In the hearing, the Agent explained the Landlord's claim as being for unpaid rent, which the Agent said the Tenant owes the Landlord for April 2023. The Parties agreed that the Tenant vacated the rental unit on March 31, 2023, because of a family emergency in another country. They agreed that on March 2, 2023, the Tenant provided the Landlord with a notice to end the tenancy as of March 31, 2023.

The Landlord is claiming that given the insufficient for this fixed term tenancy agreement, the Tenant is responsible for paying rent until a new tenant is located, which the Agent said occurred on May 1, 2023. As such, the Landlord claims a month's rent from the Tenant for April 2023.

The Advocates argue that the Landlord has not provided proof that the unit was rented as of May 2023, and not in April 2023. The Advocates also argue that the Landlord did not advertise the rental unit immediately upon receiving notice of the Tenant having vacated the rental unit in March 2023.

The Agent said that the Landlord advertised on two international classified advertisements sites, which advertisements they say were put up on March 6, 2023. The Landlord also submitted an account notice for one of the sites indicating that the advertisement was posted on March 6, 2023, and renewed on March 29, 2023. I note that the Landlord asked for \$110.00 less than the Tenant was paying. The Landlord did not submit any evidence regarding advertising on the other site mentioned in the hearing.

In addition, the Tenant relies on section 146 of the *Strata Property Act* (“SPA”) of British Columbia. The Advocates said that because the Landlord never provided the Tenant with copies of the Strata bylaws and Form K, that the Tenant may end the tenancy without penalty, according to section 146 of the SPA. The Advocates said the Tenant received a copy of the condition inspection report (“CIR”) subsequent to the Tenant giving the Landlord notice of her departure.

In the hearing, the Agent said that another of the Landlord’s agents would have provided the Tenant with a Form K, but the Agent did not appear to know what else the other agent would have provided to the Tenant.

The Advocates disputed that the Form K was sent before the Tenant gave notice to end the tenancy. They directed my attention to the Tenant’s Exhibit “C”, which is a letter dated March 10, 2023, from the Tenant to the Landlord. Exhibit “C” says that the Landlord failed to provide the Tenant with a CIR, the Strata Bylaws, or a Form K within seven days of completing the CIR. It goes on to say that “...when a breach of this nature occurs, *the landlord loses the right to claim against our security damage deposit for damage to the rental suite.*” [emphasis in original]

Exhibit “C” also addresses a tenant’s apparent rights under section 146 of the SPA, including a landlord’s obligation to pay the tenant’s reasonable moving expenses to a maximum of one month’s rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the

Landlord must prove:

1. That the Tenant violated the RTA, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

The Agent argued that the Tenant was not authorized by the RTA to end the tenancy in the way she did. Section 45 (2) of the RTA states that a tenant may end a fixed term 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.

I find that the way in which the Tenant ended the tenancy breaches all parts of section 45 (2) of the RTA. I find that the Landlord has demonstrated that they incurred a loss of rent for April 2023. This is based on the Landlord’s evidence showing that they advertised for a new tenant on March 6, 2023, and renewed their advertisement(s) on March 29, 2023, which I find was reasonable in the circumstances. I note that the Tenant provided her notice to end the tenancy on March 2, 2023, which was a Thursday. The Landlord advertised the unit for rent on March 6, 2023, which was a Monday – or the second business day after receiving the Tenant’s notice.

Further, I find from the March 29, 2023 renewal of the advertisement that it is more likely than not that the Landlord did not find a new tenant for April 2023; therefore, I find that the Tenant owes the Landlord rent for this month.

The Advocates argued that section 146 of the SPA negates any penalty, because the Landlord failed to provide the Tenant with the Strata bylaws. However, I do not have the authority as an arbitrator under the *Residential Tenancy Act* to apply this section of the *Strata Property Act*. The Tenant may wish to take her claim(s) to the Civil Resolution Tribunal, which would have the authority to enforce the SPA.

Further, section 146 of the SPA requires a landlord to provide the bylaws and Form K prior to the start of the tenancy:

146 (1) Before the landlord rents all or part of a residential strata lot, the landlord must give the prospective tenant (a) the current bylaws and rules, and (b) a Notice of Tenant's Responsibilities in the prescribed form.

[emphasis added]

Section 45 (3) of the RTA states that a tenant may end the fixed term tenancy if the landlord fails to comply with a material term of the tenancy agreement. However, the section allows the landlord to correct the situation within a reasonable period after the tenant gives the landlord written notice of the failure. Section 45 (3) states that the tenant may end the tenancy effective on a date that is after the landlord receives the tenant's notice of the failure.

There is no evidence before me that the Parties agreed that providing the Strata bylaws to the Tenant was a material term of the tenancy. Further, the Tenant provided the Landlord with notice of this breach *after* she had ended the tenancy; therefore, I find that the Landlord was not given any opportunity to correct this situation, let alone a reasonable period of time in which to correct it. As such, I find that the Tenant may not take advantage of subsection 45 (3) to avoid her obligations under subsection 45 (2). And again, I find no evidence that providing the Strata bylaws was a material term of the tenancy agreement.

Although they did not argue it, I also find that a landlord failing to comply with section 146 of the SPA does not fall within section 92 of the RTA, which deals with the doctrine of frustration of contract. Frustration is typically considered to take place when an event (such as a flood or a fire) interrupts the contract, without the fault of either party and for which the contract makes insufficient provision. Further, the event must so significantly change the nature of the parties' rights or obligations under the contract that it would be unjust to hold the parties to the altered agreement or contract. I find that failing to provide the Strata bylaws is not such an event.

When I consider the evidence before me, overall, I find that the Landlord has fulfilled their burden of proof and met their obligations set out in the Test. The Tenant breached the RTA by ending a fixed term tenancy agreement without sufficient cause. The Landlord incurred a loss of one month's rent. The Parties agreed that one month's rent is \$3,400.00. Further, I find that the Landlord mitigated their loss by asking for less rent for the suite than the Tenant was paying, and for advertising in a reasonable manner and timeframe.

I, therefore, **award the Landlord with \$3,400.00** or one month's rent for April 2023

from the Tenant, pursuant to section 67 of the RTA. Given their success, I also **award the Landlord with their \$100.00** Application filing fee from the Tenant, pursuant to section 72 of the RTA.

I find that this claim meets the criteria under section 72 (2) (b) of the RTA to be off set against the Tenant's **\$1,700.00** security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$1,700.00** security deposit pursuant to section 72 of the RTA.

I grant the Landlord a **Monetary Order of \$1,800.00** for the remainder of the monetary awards owed them by the Tenant, pursuant to section 67 of the RTA.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is awarded **\$3,400.00** from the Tenant in unpaid rent for April 2023. The Landlord is also awarded recovery of their **\$100.00** Application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant's **\$1,700.00** security deposit in partial satisfaction of the monetary awards. I grant the Landlord a **Monetary Order of \$1,800.00** in complete satisfaction of their monetary awards. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the RTA, and 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 24, 2023

Residential Tenancy Branch