Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0768271 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, SS and FF

Introduction

As noted in my interim decision of the same date, this matter was originally set for hearing on March 27, 2013 but was adjourned to the present session as the tenant stated that she had not received the landlord's evidence package sent to her former employment address.

The primary issue in dispute is the tenant's breach of a fixed term rental agreement and the landlord's consequent loss of rent. The landlord had also sought compensation for cleaning, refuse removal and rekeying costs, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

At the commencement of the hearing, tenant stated that she had still not received the landlord's evidence which he had sent again to the address she had provided at the first session. The landlord said he had documentation indicating service had been made but the tenant said the package had omitted her unit number and had been turned back.

In any event, the tenant stated that she believed the hearing turned on relatively simple matters in dispute and that she preferred to proceed.

Issues to be Decided

Is the landlord entitled to monetary compensation for the claims submitted and in what amount?

‘Background, Evidence and Analysis

This tenancy began on April 1, 2012 under a fixed term rental agreement set to end on March 31, 2013. Rent was $2,950 per month plus $50 parking and the landlord holds a security deposit of $1,475 paid at the beginning of the tenancy.

The parties concur that the tenant advised the landlord by email of October 27, 2012 that her employer had come into financial difficulty and she would have to return to California to work in her specialized field. The email stated that it constituted official notice. It did not specify an end date, but pledged cooperation in working with the landlord to find a new tenant.

The landlord replied the same day stating that ads had been posted, requested a move-out date and stated:

“So we’re on the same page, if it sits empty for 4 months, you’re only responsible for 2, if i rent after 1 month (ie. only vacant 1 month) then you’re responsible for 1, if no lag between vacant and re-rented (ie. if no loss to us) then no loss to you. thx”

According to the tenant, she advised the landlord that if the landlord found a new tenant to move in, she would vacate immediately and that her move out date would be no later than the end of December 2012 as she was on two week’s vacation at that time and commuting between Vancouver and California for her work in the interim.

The parties initially cooperated fully in the search for new tenants, but the effort appeared to wear on both, with the landlord rightfully demanding a commitment as to the move-out date and the tenant stating he had one already for the end of December 2012. The tenant also appears to have misinterpreted the landlord’s representation to limit her exposure to two month’s loss of rent as time during which she occupied the rental unit. In any event, she admitted to being flippant in advising the landlord on or about December 18, 2012 that she had not yet found new accommodation in California and might stay longer.

The landlord was of the view that the tenant’s equivocating had seriously hampered the efforts to begin a new tenancy.

The landlord was able to find new tenants beginning April 1, 2013 at a reduced rent and now seeks an award for loss of rent for January, February and March of 2013.

I find that the landlord is entitled to recover the loss of rent for January and February but not for March. I find that his email to the tenant of October 27, 2012 setting her maximum liability at two months loss of rent constitutes a binding representation on which the tenant was entitled to rely. I find this interpretation is further supported by the fact that the liquidated damages clause in the rental agreement is the exact equivalent of two months' rent at $5,900.

Liquidated damages claims are limited to a genuine estimate of the administrative cost of finding new tenants in the event of a breach of a fixed term agreement. In this case, the $5,900 is a number of times greater than the acceptable norm which is commonly half or less than half one month's rent. Therefore, when taken together with his email of October 27, 2012, I conclude that the landlord must have erroneously intended it to set an upper limit for loss of rent, reiterated in his email of October 27, 2012.

This and other claims are summarized as follows:

Loss of rent - $9,000. I note that the rental agreement separates rent of $2,950 and parking and exclude the $150 of this claim that is for parking. As to the rent portion, section 7 of the Act provides that if one party to a rental agreement suffers a loss due to the other's non-compliance with the rental agreement or legislation, then the non-compliant party must compensate the other for that loss. Such claims oblige the claimant to do whatever is reasonable to minimize the loss and I am satisfied that the landlord did so by way of advertising and marketing efforts. However, as noted, I find that the landlord must be bound by his representation of October 27, 2012 to the tenant to the effect that her exposure for loss of rent would be limited to two months. I would further note that the tenant's flippant comment on December 18, 2012 that she might not move could not have held the landlord up for more than nine days as he knew for certain she was gone on December 27, 2012 at a time when marketing would have minimum effect. Therefore, on this portion of the claim, I award two months' rent in the amount of $5,900.

General cleaning - $150. This claim is supported by a receipt but challenged by photographs submitted by the tenant. As the landlord had attempted to arrange a move-out condition inspection to which the tenant did not respond, I find in favour of the landlord and award this claim.

Rubbish removal - $196.00. For the same reasons cited in the foregoing item, this claim is allowed.

Re-key - $84. The landlord stated this expense resulted from the tenant's failure to return a key but the tenant stated she had left the key on the counter when she left. Again, on the tenant's absence from a move-out condition inspection, I favor the landlord's version and allow the claim.

Stop payment bank fees - $21. The landlord stated that he was charge $7 each time he attempted to cash one of the tenant's post dated cheques. I am uncertain as to the wisdom of continuing to try each cheque in turn and dismiss this claim.

Filing fee - $100. As the application has substantially succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant.

Security deposit – ($1,475). As authorized by section 72 of the Act, I hereby order that the landlord retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Loss of rent	$5,900.00
General cleaning	150.00
Rubibsh removal	196.00
Re-key	84.00
Filing fee	100.00
Sub total	$6,430.00
Less retained security deposits (No interest due)	- 1,475.00
TOTAL remaining owed to landlord	**$4,955.00**

Conclusion

In addition to authorization to retain the tenant's security and pet damage deposits, the landlord's copy of this decision is accompanied by a Monetary Order for **$4,955.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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 6, 2013

Residential Tenancy Branch