Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIDGE MEADOWS PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF
MNDC FF

Preliminary Issues

The Landlord filed an application and paid the filing fee in order to have an opportunity to respond to the Tenant's application. They confirmed that they were not making a claim against the Tenant and only wanted to be able to present their side of the story.

Upon review of the foregoing information, I informed the Landlord that they did not need to file an application to seek an opportunity to respond to claims made against them, as the principles of natural justice require that all parties have an opportunity to respond. Accordingly, I find the Landlord's application to be moot, and it is hereby dismissed. In light of the foregoing I decline to award the Landlord recovery of the filing fee.

Upon review of the Tenant's application the Property Manager argued that the owner was the Landlord not herself or the property management company. She confirmed that she was contracted by the owner to manage the property and that she was the person who found the Tenant and entered into the tenancy agreement with her.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> > (i) permits occupation of the rental unit under a tenancy agreement, or
> >
> > (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
> >
> > (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

> (c) a person, other than a tenant occupying the rental unit, who [emphasis added]
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

Based on the aforementioned, I find the Property Manager and the property management company were correctly named as Landlords in this dispute.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: text messages; e-mails; strata minutes; Canada Post receipts; the tenancy agreement and addendums; and her written statement.

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; the tenancy agreement and addendums; and their written statement.

During the course of this proceeding the following facts were confirmed and were not in dispute:

- On July 12, 2012, the parties entered into a written fixed term tenancy agreement that was to begin on August 1, 2012 and end on July 31, 2013;
- At the time the tenancy agreement was signed the Tenant paid the security deposit of $762.50 and provided the Landlord with twelve post dated cheques for rent which was to be $1,525.00 per month;
- On July 17, 2012 the Landlord sent the Tenant a text informing her that the strata council denied the owner's request to rent the unit and her tenancy was cancelled; and
- The Tenant's deposit and rent cheques were shredded.

The Tenant testified that she was seeking compensation for the stress she endured, as a result of the Landlord's breach of contract, equal to rent for the entire fixed term in the amount of $18,300.00. She advised that she was not able to secure another rental unit until September 1, 2012 which resulted in her having to stay living with her mother for an extra month and her son moving back to the town they came from.

The Tenant advised that she moved to the city on May 1, 2012 and began residing with her mother. Her older son stayed in their previous city until he finished school on June 28, 2012 and then he came and resided with her and her mother. Her younger son moved to the city in mid August. She claimed that when she was not able to get the rental unit as of August 1, 2012, her older son quit his job and moved back to their previous city because he no longer wanted to reside with his grandmother.

The Tenant submitted that she had contacted the Property Management's office manager, and that he offered to compensate her with her moving expenses if she could provide him with receipts. She did not have receipts as her family and friends assisted with her move so she did not pursue that course of action. She moved into a different townhouse on September 1, 2012 but had to move out in February 2013. It was shortly after moving in February 2013 that she decided to pursue claiming compensation for the breach of her original tenancy agreement.

The Tenant stated that she had to settle for a lesser quality townhouse as a result of the Landlord's breach. The one she ended up renting was about 400 sq ft smaller, had only one bathroom, not much of a back yard, and no parking or garage, and was $1,450.00 per month. Her original tenancy was for a 1400 sq foot townhouse with a garage, two bathrooms, and a really nice back yard for $1,525.00 per month.

The Landlord testified that she was very sorry for the turn of events but it was out of her control. She stated that at the time that the owner had applied to the strata council to rent her unit there were two opportunities to rent still available; however, by the time they secured a tenant those spaces were filled. She argued that as a result the tenancy agreement was frustrated.

She confirmed that the townhouse was a really nice place and that when the contract was cancelled she did her due diligence in doing everything she could to find the Tenant a replacement unit. She stated that this was an unfortunate situation but that the Tenant has not suffered a loss, she did not incur moving costs, a rental loss, no storage costs, and she was able to secure a new place as of August 1, 2012.

In closing, the Tenant reargued that she had in fact suffered a loss with her son moving back to their previous city, her having to live with her mother for another month, and having to live in a lower quality unit only to have to move again five months later.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Upon review of the evidence I find the parties had a legally binding tenancy agreement. I make this finding because both parties had capacity to enter into the agreement; they reached consensus on the terms; and consideration was provided in the form of payment of the security deposit.

Residential Tenancy Policy Guideline # 34 stipulates that a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and

consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

Based on the above, I find that this contract was not frustrated because this situation would not have occurred had the property manager done their due diligence by ensuring the owner had secured strata council's permission to rent, in writing, prior to entering into a tenancy agreement.

Residential Tenancy Policy Guideline # 16 provides that with claims for breach of contract the purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the consequences which were incurred could reasonably have been expected to occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Section 67 of the Residential Tenancy Act states:

> *Without limiting the general authority in section 62(3) [director's authority], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Notwithstanding the Tenant's argument that her losses included the loss of her son and resulted in her having to move again five months later, I find there to be insufficient evidence to prove such losses and I find her claim of $18,300.00 to be excessive. That being said, I find the Tenant has provided sufficient evidence to prove she suffered a loss by having to continue to reside with her mother for one additional month. Accordingly, I award the Tenant compensation in the amount equal to one month's rent of the breached contract of **$1,525.00.**

The Tenant has been partially successful with her claim; therefore, I award partial recovery of her $100.00 filing fee in the amount of **$50.00.**

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **$1,575.00** ($1,525.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 14, 2013

Residential Tenancy Branch