



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

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

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this tenancy began on August 1, 2011, that the tenant vacated the rental unit on February 28, 2013, monthly rent was \$1100, and the tenant paid a security deposit of \$550 on or about July 6, 2011.

The parties disagreed on the length of the fixed term portion of the tenancy agreement, with the landlord providing evidence, both written and oral, that the end of the fixed term was July 31, 2013, and the tenant providing evidence, both written and oral, that the end of the fixed term was April 30, 2013.

The parties acknowledged that the tenant's son was the occupant of the rental unit and the attending tenant here lived out of town. The tenancy agreement submitted by the landlord shows the name of the attending tenant and that tenant's son; this tenancy agreement was signed only by the attending tenant.

The landlord's original monetary claim was in the amount of \$3620.80; however during the hearing landlord reduced her claim to \$2520.80. The monetary claim is comprised of loss of rent revenue of \$1100 for April and \$1100 for May 2013, travel and additional labour for \$60, replacement of a fixture for a broken light for \$79.41, replacement of a closet door slide and missing cabinet pads for \$11.39, and additional travel and labour for repairs for \$70 and a move out fee charged by the strata for \$100. The landlord also wrote in the sum of \$15.59 for copies.

The landlord's relevant documentary evidence included receipts for materials for small repairs made, a written tenancy agreement signed by the landlord and the tenant on July 6, 2011, notice from the tenant of their intention to vacate the rental unit, dated January 31, 2013, on February 28, 2013, email communication between the landlord and the tenant regarding showings of the rental unit, copies of advertisements for the rental unit, and copies of email communication between the landlord and potential tenants.

The landlord confirmed there were no condition inspection reports, either for the move-in or the move-out.

In support of her application, the landlord submitted that she received notice from the tenant that her son, who was the actual occupant of the rental unit while attending school, was vacating the rental unit by February 28, 2013. The landlord argued that this notice broke the terms of the fixed term tenancy agreement, as the end of the fixed term was July 31, 2013.

The landlord said that she immediately started advertising the rental unit, beginning February 6, 2013, and had many showings; however she was unsuccessful in finding a new tenant until June 1, 2013. Therefore, according to the landlord, she is entitled to loss of rent revenue for April and May, in the amount of \$2200 total, due to the tenant's insufficient notice to vacate prior to the end of the fixed term.

I must note that the rent for March is not at issue due to the parties' agreement that the landlord retain the tenant's security deposit of \$550 for part of the month, and the tenant paying the balance of \$550.

The landlord also submitted that she was entitled the costs of repairs and labour for cleaning and repairing the rental unit.

Tenant's response-

The tenant submitted that when entering into the tenancy, she discussed with the landlord that they would need the rental unit only until the end of her son's school year, which would be April 30, 2013. The tenant also submitted that although she signed the original tenancy agreement indicating that the tenancy agreement was for a fixed term ending on July 31, 2013, the landlord communicated with her that she, the landlord, also wanted the tenant's son to sign the tenancy agreement as he was listed as an additional tenant.

The tenant submitted that she asked her son in an email in October 2011 to sign the tenancy agreement and give the document to the landlord. The tenant stated that she sent the document via an email attachment.

According to the tenant, when her son received a copy of the tenancy agreement, he noticed that the fixed term of July 31, 2013, was inaccurate as he would be out of school by April 30, 2013, and as such, he modified the tenancy agreement signed by the landlord and the tenant by marking through July 31, 2013, as the end of the fixed term, and writing in April 30, 2013, as the end of the fixed term.

The tenant contended that her son left a copy of the revised tenancy agreement for the landlord on counter at the rental unit according to the landlord's instructions in February 2012, and that she collected the document, without ever having voiced a disagreement to the revised terms.

The tenant further contended that the parties agreed that when she, the tenant, paid an extra month's rent for March, there would be no further rent owed.

The tenant denied that the rental unit needed any repairs or cleaning, as the tenants cleaned the rental unit and received the landlord's approval.

In rebuttal, the landlord denied receiving the revised tenancy agreement.

Analysis

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

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Loss of rent revenue-

As to the issue of unpaid rent, 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.

In the case before me, I am not persuaded by the tenant's arguments that the revised tenancy agreement she submitted into evidence was delivered and agreed to by the landlord. There was no acknowledgement from the landlord that she received the document and further there was no proof that the landlord agreed to the revision. If this would be the case, I would expect the original signatories, the landlord and the attending tenant, to initial the changes, not the one making the revisions, such as is the

case here when the tenant's son changed the fixed term, initialled the change and signed the document, purportedly on February 27, 2012.

I therefore find that the original tenancy agreement signed by the parties here to be the controlling contract, and therefore I find that the end of the fixed term was July 31, 2013.

As such, I find the tenant was responsible to pay monthly rent until the end of the fixed term, subject to the landlord's requirement that she take reasonable measures to minimize her loss.

I find the landlord submitted sufficient oral and documentary evidence that she mitigated her loss by immediately advertising and showing the rental unit and was unable to find a new tenant until June 2013.

I therefore find the landlord has proven her monetary claim of loss of rent revenue for the month of April and May 2013, of \$1100 each month, for a total of \$2200.

Repair costs, labour, and cleaning-

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to inspect the rental unit and complete a condition inspection report at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to conduct an inspection and complete a move-out condition inspection report.

In the absence of a move in or move out condition inspection report or other independent proof, I find the landlord has not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and thereby is unable to meet steps 1 and 2 of her burden of proof.

I therefore dismiss her claim for travel and additional labour for \$60, replacement of a fixture for a broken light for \$79.41, replacement of a closet door slide and missing cabinet pads for \$11.39, and additional travel and labour for repairs for \$70.

Move-out strata fee-

The landlord supplied no evidence to support this portion of her application and I dismiss her claim for \$100.

Copying costs-

I find that I do not have authority to award an applicant for costs associated with preparing paperwork or making copies as these are not costs enumerated as recoverable under the Act. I therefore dismiss her monetary claim for \$15.59.

*Filing fee-*I allow the landlord recovery of the filing fee of \$50 as I have found at least partial merit with her application.

Due to the above, I find the landlord has an entitlement to a monetary award in the amount of \$2250, comprised of loss of rent revenue for \$2200 and the filing fee of \$50.

Conclusion

The landlord's application has been granted in part and she has been granted a monetary award in the amount of \$2250 and I grant the landlord a final, legally binding monetary order in the amount of \$2250, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from 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: August 1, 2013

Residential Tenancy Branch