Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession, compensation for damage or loss under the Act, to retain the security and pet deposits and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant submitted evidence that included a “counter claim” requesting return of the deposits paid; loss of quiet enjoyment and heating costs. The tenant did not submit an application for dispute resolution; therefore, the tenant’s claim could not be considered.

The parties were informed that when a landlord applies to retain deposits, any residue of the deposits are Ordered returned to a tenant; in accordance with the legislation and policy.

The parties confirmed that the tenancy has ended; an Order of possession was not required.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $600.00 for loss of February 2014 rent revenue?

May the landlord retain the pet and security deposits in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2013; it was a 3 year fixed-term, ending on June 30, 2016. Rent was $600.00 per month, due on the 1st day of each month. A copy of the tenancy agreement was supplied as evidence.

A security deposit in the sum of $300.00 and pet deposit in the sum of $200.00 was paid.

The rental unit was a duplex; the tenant's daughter had lived on 1 side of the duplex for the past 4 years. The tenant's mother entered into a tenancy agreement, to rent the other side of the duplex. Each unit originally had 2 bedrooms.

Prior to the tenant moving into the rental unit the landlord renovated that unit, by removing 1 of the bedrooms, allowing access from the daughter's unit. This then provided the daughter with a 3rd bedroom. The wiring and heating system in that bedroom remained connected to the utility meter in the mother's unit. The mother and daughter then reached a mutual agreement in relation to payment of utilities, so the mother would be compensated for heat and hydro used in the 3rd bedroom of the daughter's unit.

On December 24, 2013 the landlord received a note from the tenant, indicating she would vacate the unit effective February 1, 2014. The landlord immediately replied, stating that the tenant would be breaking the 3 year fixed term. The landlord also pointed out that the renovation was meant to accommodate the tenant and her daughter, with the 3 year commitment in mind. The landlord said they would then have to return the units to their original state.

A copy of a December 17, 2013 letter issued by the tenant; giving notice, was supplied as evidence. The letter indicated 2013, in error.

The tenant stated she could no longer afford to stay in the unit; the heating bills were too high.

On January 2, 2014 the tenant emailed the landlord informing them she had placed a rental ad on a popular web site, in an attempt to mitigate any loss of rent. The tenant wrote that she did not believe the landlord had taken steps to work with her, so she had

taken steps and would send the landlord any response received. On the same date the landlord sent the tenant a message and told her to remove all advertising from the web site. The landlord indicated that until the unit was renovated back to its original state it could not rented. The landlord said the tenant did not have the right to sublet the unit.

On February 11, 2014 the landlord placed an ad on a popular web site; rent requested was $1,050.00. The unit had been returned to its original 2 bedroom state. The landord said when they attempted to work on the adjoining unit the tenant had complained, so they could not begin work until the tenant had vacated.

The tenant said her daughter's boyfriend had completed the original renovation and that it had taken only 3 days to complete. The tenant said the landlord should have been able to convert the unit back to the original state before the end of January. The landlord said that was not realistic and that the work continued into February. The landlord supplied photographs of the bedroom that was being renovated to remove the door. The landlord had to then drywall and paint this area.

On January 8, 2014 the tenant received a letter from the landlord, clarifying that notice had been given. The letter also informed the tenant that she should vacate the property by 1 p.m. on January 31, 2014. The tenant said she thought this meant that the landlord had now given her notice ending the tenancy. The landlord said they were informing the tenant that she could not over hold into February.

On January 20, 2014 the tenant sent the landlord an email indicating she had vacated; the move-out inspection report was completed on January 22, 2014. The tenant confirmed that she did not provide the landlord with her written forwarding address until her evidence for this hearing was served to the landlord.

Copies of letters and email communication were provided as evidence.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Pursuant to section 44(f) of the Act, I find that the tenancy ended effective January 20, 2014; the date the tenant informed the landlord she had vacated the unit.

When the tenant gave notice to end the fixed term tenancy the tenant breached the Act. Section 45 of the Act sets out the means a tenant may end a fixed term tenancy and, in the absence of a breach of a material term of the landlord, notice could not be given for a date earlier than the last day of the fixed term.

I have considered the landlord's submission that they could not rent the unit until they had completed a renovation, returning the unit to a 2 bedroom configuration. Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

As early as January 2, 2014 the tenant attempted to mitigate by placing an ad on a popular web site. The landlord responding by telling the tenant that she must remove the ad and that she could not sublet the unit. The landlord firmly believed that the unit could not be rented in the current state, as the sharing of utilities would not have been possible. However, there was no evidence before me that the landlord explored this option at all. There was a refusal to allow the tenant to locate a possible sublet and no interest shown in at least considering applicants who may well have been willing to accept utility term payments, at a reduced sum, to take into account the bedroom wiring and heat.

Basing the claim on an absolute need to return the unit to its original state fails to recognize the requirement to mitigate. The tenant's breach of the Act does not confer an automatic entitlement to compensation; that must be accompanied by efforts to minimize a loss. If the unit had been advertised as early as possible and the renovation completed between January 22 and 31, 2014; the landlord could have demonstrated a sincere attempt to mitigate the loss of February 2014 rent. However, I find the delay, based on the insistence the unit could not be rented in its present state equaled a refusal to consider all mitigation options.

The landlord had possession of the unit from at least January 22, 2014 but did not commenced advertising until February 11, 2014; almost half way through the month they are claiming a loss of revenue. I find that the absence of any evidence as to why the unit was not advertised in advance of the vacancy and a plan set in place to complete the work between January 22 and January 31, 2014; resulted in a failure to mitigate by the landlord. The landlord was convinced that the unit had to be returned to its original state; but the need to mitigate the loss claimed meant other possibilities might have to be considered.

Therefore, in the absence of evidence that the landlord took all steps to minimize the loss that is claimed I find that the claim is dismissed. I am not convinced that another

occupant would not have been willing to rent the unit as it was and, in the absence of any effort to locate a new occupant, I find that the attempts to mitigate were not sufficient.

Residential Tenancy Branch policy suggests when a landlord claims against a deposit, any balance that may remain should be ordered returned to the tenant. I find this is a reasonable stance. Therefore, I find that the tenant is entitled to return of the $300.00 security deposit and $200.00 pet deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of $500.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to return of the deposits.

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: February 20, 2014

Residential Tenancy Branch