



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that on May 26, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 22, 2014 the Landlord submitted documents the Landlord wishes to rely upon as evidence to the Residential Tenancy Branch. He stated that these documents were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 20, 2014 the Tenant submitted documents the Tenant wishes to rely upon as evidence to the Residential Tenancy Branch. The male Tenant stated that he was not aware these documents had to be served to the Landlord and that they were not served to the Landlord by the Tenant. As the documents were not served to the Landlord they were not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue arising from the premature end to a fixed term tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a fixed term tenancy agreement that began on June 01, 2013, the fixed term of which was to end on July 01, 2014. The parties agree that the tenancy agreement required the Tenant to pay monthly rent of \$1,300.00 by the first day of each month.

The Landlord and the Tenant agree that the Tenant provided the Landlord with written notice of their intent to end the tenancy on March 31, 2014 and that the keys to the rental unit were returned on March 08, 2014.

The Landlord stated that he began advertising the rental unit on two popular websites on February 19, 2014; that he updated the advertisements twice each week; and that on, or about, March 26, 2014 he reduced the rent to \$1,250.00 in an attempt to attract a new occupant. The Landlord submitted documentation demonstrating the various advertisements.

The Landlord stated that he was able to find a new occupant for May 15, 2014, at the reduced rent of \$1,250.00. He is seeking compensation for loss of revenue from April of 2014, in the amount of \$1,300.00; from ½ of May of 2014, in the amount of \$675.00; and \$50.00 for June of 2014, which is the difference between what the Tenant would have paid and the new occupant is paying.

The Tenant argued that since this rental unit is in a community with a large number of seniors, it would have been prudent for the Landlord to also advertise the rental unit in the newspaper.

The Landlord and the Tenant agree that the parties attempted to negotiate a settlement to this dispute prior to the hearing but they were unable to reach an agreement. The male Tenant stated that he believes they could have reached an agreement if the Landlord had continued to pursue a settlement agreement. The Landlord stated that he believed their negotiations had failed so he filed this Application for Dispute Resolution.

The parties were given the opportunity to reach a settlement agreement during the hearing, however the parties were unable to reach a settlement that was agreeable to both parties.

Analysis

The undisputed evidence is that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,300.00 by the first day of each month; that this fixed term tenancy began on June 01, 2013; that the fixed term of this tenancy ended on July 01, 2014; and that the Tenant vacated the unit on March 08, 2014.

I find that the Tenant did not comply with section 45(2) of the *Residential Tenancy Act* (Act) when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the Act, pursuant to section 67 of the Act.

I find that the Tenant must pay \$1,300.00 to the Landlord for the loss of revenue that the Landlord experienced in April of 2014; \$675.00 for the loss of revenue the Landlord experienced in May of 2014; and \$50.00 for the loss of revenue the Landlord experienced in June of 2014. The loss of revenue award for May and June is, in part, a reflection of the reduced rent the Landlord charged in an effort to locate a new occupant.

In determining this matter, I find that the Landlord made reasonable attempts to mitigate his lost revenue. On the basis of his testimony and the supporting documentation, I find that he advertised the rental unit on two popular websites in a timely and regular manner and that he reduced the rent by \$50.00 in an attempt to attract a new occupant.

Section 7(1) of the Act only requires a landlord to take reasonable steps to mitigate a loss. It does not require a landlord to make any or all efforts to find a new occupant when a tenant elects to prematurely end a fixed term. I find that advertising on the internet in the current rental market is reasonable and that the Landlord was not also obligated to advertise in the print media. I note that there is nothing that prevented the Tenant from advertising in print media in an attempt to identify a potential new tenant in an effort to assist the Landlord and minimize the liability of the Tenant.

In determining this matter I have placed no weight on the undisputed testimony that the parties attempted to negotiate a settlement prior to the Landlord filing this Application for Dispute Resolution. While it is often beneficial to both parties to reach a settlement without the need for a Dispute Resolution Hearing, there is nothing to prevent one party from filing an Application for Dispute Resolution if they are unable to reach a settlement agreement.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,075.000, which is comprised of \$2,025.00 for loss of revenue and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,075.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: September 03, 2014

Residential Tenancy Branch

