



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stratton Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage or loss under the Act, to retain the security deposit 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.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of February 2016 rent in the sum of \$650.00?

Is the landlord entitled to compensation in the sum of \$162.30 for hydro and \$72.00 for cleaning costs?

May the landlord retain the \$500.00 security deposit?

Background and Evidence

The tenancy commenced on June 1, 2015. Rent was initially \$1,000.00 per month, due on the first day of each month. The parties agreed that in October or November 2015 rent was reduced to \$650.00 per month. The tenant paid a \$500.00 security deposit. Hydro costs were not included with rent. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed.

The parties agreed that the tenancy ended effective January 22, 2016. The tenant confirmed that very short notice was given to end the tenancy. The tenant had lost his job and needed to vacate quickly; providing notice ending the tenancy just days before he vacated.

The landlord did not schedule a move-out condition inspection report and completed a report in the absence of the tenant.

The landlord confirmed receipt of the tenants' written forwarding address, sent via email before the end of January 2016. The landlord filed, claiming against the security deposit on February 28, 2016.

The landlord has claimed the loss of February 2016 rent revenue in the sum of \$650.00, as the tenant did not provide adequate notice ending the tenancy. When asked what efforts were made to rent the unit the landlord said that units in the building are advertised on an on-going basis. The landlord was asked what rent was sought. The landlord said that rent for a unit of this size was \$850.00 at the time and it was advertised at that rate. The unit was not rented until June 2016. The landlord has claimed the sum the tenant paid in rent.

The landlord supplied an email sent to the tenant on February 26, 2016 indicating that due to improper notice, rent for the month of February would be charged and the security deposit would be withheld.

The tenant did not leave the rental unit in "rent turn-over clean" condition. The move-out inspection recorded areas in the kitchen and main bathroom that needed cleaning. The landlord claimed four hours at \$18.00 per hour.

The landlord supplied a copy of a hydro bill in the sum of \$163.20 for the billing period of February 18 to April 19, 2016. When this was pointed out during the hearing the landlord withdrew the hydro claim as it covered a period of time the tenant was not occupying the unit.

The tenant believed there was an agreement he could vacate when he did.

The tenant responded that he cleaned the unit to a level that was better than when he moved in. The unit is old and rundown and he was surprised when he saw the claim for cleaning.

Analysis

Residential Tenancy Branch policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage

or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

Section 45 of the Act requires a tenant to provide at least one months' written notice when ending a month-to-month tenancy on a day before the day rent is due. There was no dispute that the tenant did not give proper notice. There was no evidence before me that indicated the landlord had mutually agreed the tenancy would end. The tenant vacated within days of giving notice.

Therefore, I find pursuant to section 44(f) of the Act that the tenancy ended effective January 22, 2016 when the tenant vacated as a result of notice given contrary to section 45 of the Act.

Section 7 of the Act requires a claimant to take steps to mitigate a loss. While the tenant failed to provide proper notice ending the tenancy, this does not confer an automatic right to compensation on the landlord. The landlord must show that efforts were made to rent the unit sufficient to support the claim of loss.

I find that the landlord failed to supply any evidence of a rental market that would support increasing the rent by \$200.00, particularly when months earlier the rent had been decreased to \$650.00. In the absence of any evidence supporting rent sought in the increased sum I can only conclude that the landlord did not mitigate the loss by acting reasonably. For example, the landlord could have advertised the rent at the rate the tenant had paid, for the month of February, in an attempt to attract a new tenant and minimize the loss. Rather, the landlord advertised the unit at a rate that exceeded the tenants' rent by \$200.00.

I have also considered the time in the month the tenant gave notice to end the tenancy and the likelihood of the landlord being able to locate a new tenant within just over one week and find on the balance of probabilities that would have been extremely difficult; even if the unit had been advertised at \$650.00. Therefore, based on the notice given by the tenant, combined with the attempt to locate a new tenant at the increased rate of rent, I find that the landlord is entitled to compensation in the sum of \$325.00 for loss of rent revenue to February 15, 2016. I have based my decision on the fact that an

increase in rent sought failed to support an attempt to fully minimize the claim made. The balance of the claim for loss of rent revenue is dismissed.

In relation to the claim for cleaning, I have considered section 37 of the Act, which provides:

Leaving the rental unit at the end of a tenancy

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

A tenant is not required to leave a rental unit in a state that is fully ready for a new tenant; the unit must be left reasonably clean. The tenant was not asked to attend a move-out condition inspection and not given an opportunity to disagree with the move-out condition inspection report completed by the landlord. Therefore, I have relied on the tenants' submission that the unit was left in a reasonably clean state and find that the claim for cleaning is dismissed.

In relation to the security deposit, I find that no later than January 31, 2016 the landlord had been given the tenants' written forwarding address; this was confirmed by the landlord.

Sec 38(1) of the Act provides:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord had until February 15, 2016 to either return the deposit in full or submit an application claiming against the deposit. The landlord did not submit an application until February 28, 2016.

Section 38(6) of the Act sets out the consequences when a deposit is not returned as required:

- (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find, pursuant to section 38(6) of the Act, that the landlord is holding a security deposit in the sum of \$1,000.00.

The landlord is entitled to total compensation in the sum of \$325.00 for the loss of February 2016 rent revenue.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$425.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the security deposit in the sum of \$575.00. 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 is entitled to compensation in the sum of \$325.00 for loss of rent revenue. The balance of the claim for rent revenue is dismissed.

The claim for hydro costs was withdrawn.

The claim for cleaning is dismissed.

The landlord is holding a security deposit in the sum of \$1,000.00

The landlord may retain \$425.00 from the security deposit in satisfaction of the claim.

The landlord is ordered to return the balance of the security deposit to the tenant.

This decision is final and binding and 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: October 18, 2016

Residential Tenancy Branch

