



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPB MNR MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for breach of an agreement pursuant to section 55;
- a monetary order for unpaid rent and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:25 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on September 28, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The Landlord amended its application by updating the monetary order worksheet and served this amended application and evidence package to the tenant by registered mail on November 8, 2016. The landlord provided a registered mail tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the original and amended Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant. Although, the landlord's amended application was not served to the respondent at least 14 days prior to the hearing, I accepted the amended application as it is deemed served on November 13, 2016, which is still 8 days before

the hearing date. The tenant did not attend the hearing to argue that more time was required to respond to the amended application.

Issues

Is the landlord entitled to an order of possession for breach of an agreement?

Is the landlord entitled to a monetary award for unpaid rent or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy for this townhouse began on August 15, 2013 and the current monthly rent is \$2900.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1400.00 at the start of the tenancy which the landlord continues to hold.

The landlord submits that the tenancy was a fixed term tenancy ending on September 30, 2016 and the tenant is in breach of the agreement by failing to vacate the rental unit at the end of the fixed term. The landlord submitted a copy of the signed tenancy agreement. Both parties initialed the agreement indicating that at the end of the lease the tenancy is ended and the tenant must vacate the rental unit.

The landlord is seeking unpaid rent for the month of December 2015 in the amount of \$933.00. The landlord testified that he had an agreement with the tenant to pay 2/3 of the rent for this month but the tenant only paid 1/3 of the rent. The landlord submitted an e-mail exchange and proof of e-transfer from the tenant on January 7, 2015 in support of the above.

The landlord is seeking loss of rent in the amount of \$400.00 for each of the months of October and November 2016. The landlord submits that the tenant continues to occupy the rental unit beyond the end of the fixed term lease and has paid \$2900.00 in rent for each of these months. The landlord has issued receipts to the tenant for "use and occupancy only". The landlord testified that the market value for this rental unit is \$3300.00 per month. The landlord testified that he has four other adjacent townhomes that are currently rented between \$3450-3600 per month.

The landlord is seeking loss of rent in the amount of \$3300.00 for the month of December 2016 claiming he will not be able to re-rent the rental unit on short notice.

The landlord is also seeking \$4000.00 in loss suffered as a result of by-law fines levied against the landlord due to infractions by the tenant. The fines were due to ongoing infractions by the tenant renting the unit on Air B&B and subletting the rental unit.

Analysis

Pursuant to Section 44(1)(b) of the Act, a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

The agreement entered into and signed by both parties required the tenant to vacate the rental unit by September 30, 2016. Both parties initialed the agreement indicating that at the end of the lease the tenancy is ended and the tenant must vacate the rental unit. The landlord was entitled to possession of the rental unit effective this date.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of **\$933.00** from the month of December 2015.

I accept the landlord testimony that the market value for this rental unit is \$3300.00 per month and award the landlord an amount of **\$800.00** for loss of rent for October and November 2016.

The landlord claim for loss of rent in the amount of \$3300.00 for the month of December 2016 is dismissed with leave to re-apply. At the time of the hearing, the landlord had not suffered this loss.

Pursuant to section 7(2) of the Act, an applicant must do whatever is reasonable to minimize loss. I find it would have reasonable for the landlord to minimize the loss incurred from on-going by-law fines by taking appropriate action to end the tenancy for cause in accordance with the Act. The landlord provided insufficient evidence that he took reasonable steps to mitigate this loss. The by-law fines were levied against the landlord for on-going infractions dating back to November 2013.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$1833.00** (\$933.00+800.00+100.00).

The landlord continues to hold a security deposit of \$1400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$433.00**.

Conclusion

I grant an Order of Possession to the landlord effective **November 30, 2016**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$433.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 21, 2016

Residential Tenancy Branch