Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPN, MNR, MNSD, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made on June 13, 2016, in which the landlord has requested compensation for loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied on November 16, 2016 requesting return of the security deposit and to recover the filing fee cost form the landlord. The tenant also indicated other claims for loss, detailed on the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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

At the start of the hearing the calculation of each claim was reviewed in order to determine the details of the claims.

The landlords' application included a claim for loss of rent revenue, set out in the details of the dispute portion of the application.

The tenants' application provided details of a claim for damage or loss under the Act, set out in the details of the dispute portion of the application.

The parties both understood the total claim that was made by the other.

Issue(s) to be Decided

Is the landlord entitled to compensation for internet charges and loss of June 2016 rent revenue?

Is the tenant entitled to compensation for damage or loss for wages, a truck rental increase, guest fees and medical services?

Is the tenant entitled to compensation for stress and hardship?

Is the landlord entitled to retain the security deposit or must the landlord be ordered to return the deposit to the tenant?

Background and Evidence

The one year fixed term tenancy commenced on July 1, 2015. At the end of the term the tenant was to vacate. Rent was $1,200.00 due on the first day of each month. The landlord is holding a security deposit in the sum of $600.00. A copy of the tenancy agreement was supplied as evidence.

The landlord has made the following claim:

- $50.40 internet costs; and
- $500.00 loss of June 2016 rent revenue.

The tenant has made the following claim:

- $167.63 loss of wages;
- $10.00 rental truck increase;
- $200.00 guest fee;
- $315.75 physio, osteopath and massage; and
- $500.00 stress and hardship.

There was no dispute that on May 4, 2016 the tenant sent the landlord a message giving notice to end the tenancy. The landlord requested proper written notice. On May 5, 2016 the tenant provided written, signed and dated notice ending the tenancy effective May 31, 2016. A copy of the notice was supplied as evidence. The tenant stated the landlord did not want to accept the notice; however there is no dispute the landlord did take the notice from the tenant.

The landlord immediately began to advertise the rental unit. The landlord received five emails and 14 telephone calls in response to the advertisement. Ten of the respondents said that they could not give notice to commence a new tenancy June 1, 2016. Eight of the respondents could move in effective July 1, 2016. The landlord was able to secure a new tenant who moved in June 15, 2016.

On May 5, 2016 a letter was issued by the landlord explaining the notice given by the tenant was insufficient and that the time had passed allowing this notice. The landlord wrote that they had been given advice that the notice could be treated as a request to assign or sublet. The landlord wrote that they would not consent to assignment or sublet as only one month remained in the term.

The tenant responded that initially a couple was located who wanted to rent the unit effective June 1, 2016. The tenant informed the landlord on May 5, 2016 that the couple would be viewing the unit. The tenant said the landlord was not willing to meet these people. The tenant wanted to assist the landlord in locating new tenants for the end of May 2016 but the landlord showed no interest. The tenant said that the rental market was very tight and it should have been easy to rent the unit quickly.

On May 9, 2016 the landlord sent a message indicating the unit had been rented effective June 15, 2015, 2016. The landlord informed the tenant:

> *"As such your June rent owing is $600.00 for the period June 1 – 15th. Please provide me a cheque in the next few days for $600.00 dated June 1st for your portion of the June rent…"*

The landlord also asked the tenant to provide three times for the inspection.

On May 28, 2016 the tenant wrote the landlord indicating that it had appeared the landlord had not accepted the tenants' notice to end the tenancy. The tenant was not confident the landlord had tried to rent the unit effective June 1, 2016. The tenant wrote that she had been given advice that she could occupy the unit for the number of days required to cover a $500.00 sum of rent that had been requested. The tenant said she would be available between 8 a.m. and 6 p.m. June 12, 2016 for an inspection. The tenant informed the landlord a van would arrive on June 11, 2016 so the tenant could remove her property. There was no dispute that the tenant then wrote a cheque in the sum of $500.00; the sum now claimed by the landlord, that was left in the landlords' mailbox.

On May 29, 2016 the landlords came to the tenants' door and told the tenant she must vacate. The landlord said they would change the locks on May 31, 2016. The tenant was confused by this as she had paid rent to June 15, 2016 and was willing to remain in the unit.

The landlord responded that the tenant had given notice ending the tenancy effective May 31, 2016. The landlord said that the tenant cannot withdraw her notice without the landlords' agreement. When asked why the landlord refused to allow the tenant to remain in the rental unit in an attempt to mitigate the loss claimed, the landlord responded that he had talked with staff at the Residential Tenancy Branch (RTB) and he believed the tenant was bound by the notice given to end the tenancy. The tenant was asking to over-hold in the unit. The landlord confirmed that they always change the locks at the end of a tenancy.

When the landlord insisted the tenant vacate the tenant became stressed. The tenant had to reschedule the moving truck and spend all night packing. The tenant incurred the loss of wages as she now had to move on a work day rather than on a weekend date that had been scheduled. As a result of the stress and need to pack all night the tenant had to use the services of a physio, massage therapist and osteopathic practitioner. A June 1, 2016 note from a medical centre indicated the sudden move had an impact on the tenants' mental health. The tenant provided a June 1, 2016 note from an osteopathic practitioner who writes the tenant was under stress caused by a sudden termination of the lease. Copies of the bills were supplied as evidence.

The tenant has claimed $500.00 for the stress caused by being told she must vacate with only two days' notice.

The parties completed a move-out condition inspection report and the tenants' forwarding address was given on May 31, 2016.

The tenant said that in 2015 the landlord charged her boyfriend $200.00 for staying in the home. The tenant said the landlord is not allowed to charge a fee for a guest and has claimed return of those funds.

The landlord said that the tenants' boyfriend was with the tenant when the unit was initially viewed. The tenant was told rent would be $1,200.00 for the tenant and her son. If another person were to live in the unit rent would $1,400.00. The landlord gave the tenant permission to have her boyfriend stay in the rental unit for the month of July 2015. The tenant was away when her boyfriend approached the landlord in August 2015, asking if he could remain in the unit for August 2015. The boyfriend offered the landlord $200.00, in recognition of the additional cost that could be incurred with another occupant in the unit. The landlord accepted the funds. The boyfriend offered to pay; the landlord did not ask for payment.

There was no dispute that the tenant agreed to pay $15.00 per month for internet commencing December 2015. The landlord said the tenant owes the internet fee for March, April and May 2016, plus tax totaling $50.40. Copies of the internet bills were supplied as evidence.

The tenant responded that she had agreed to additional internet costs and has paid to March, 2016. The tenant provided proof of payment to March 2016. The tenant is willing to pay $30.00 for April and May 2016. The tenant said there was no agreement for payment of taxes; only $15.00 per month.

Analysis

Section 45(2) of the Act provides:

> ***Tenant's notice***
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> ***45*** *(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
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> *(a) is not earlier than one month after the date the landlord receives the notice,*
>
> *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
>
> *(c) 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.*
>
> *(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*
>
> *(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

As the tenant gave notice to end the tenancy one month prior to the end of the fixed term I find that the tenant breached section 45(2) of the Act. There is no doubt that notice was given on May 5, 2016; the landlord may not have wanted to accept the notice, but I find that they did.

Therefore, pursuant to section 44(i) of the Act based on the tenants' notice given May 5, 2016 that the tenancy ended effective May 31, 2016.

However, the tenants' breach of the Act does not provide the landlord with an automatic entitlement to compensation. When a tenant breaches a term of the tenancy agreement or Act

a claimant has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is set out in section 7 of the Act; which 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.*

This means that the claimant must take reasonable steps to keep the loss as low as reasonably possible.

The tenants' assumption that a request for payment of rent would equate to the tenant occupying the rental unit was not unreasonable. As a result the tenant issued a cheque in the sum the landlord claims was lost as rent revenue and provided a date for a move out condition inspection of June 12, 2016. This would have informed the landlord that the tenant would not vacate on the date of the notice given to end the tenancy and allowed the landlord to provide consent to a different tenancy end date. The tenant did not communicate this intent until May 28, 2016.

RTB policy #11 suggests that a party may not unilaterally withdraw a notice to end a tenancy; consent of the other party is required. I find on the balance of probabilities that the landlord had not explicitly or implicitly waived the notice given by the tenant. While use of the term "rent" owed, rather than "rent revenue" caused the tenant to believe she could remain in the rental unit, at no time prior to May 28, 2016 did the tenant expressly state she planned on remaining in the rental unit. I find there was no consent given to withdraw or alter the notice by reaching a mutual agreement ending the tenancy on a different date or intent expressed by the landlord that the tenant could over-hold. Therefore, I find that the notice given to end the tenancy remained unchanged at May 31, 2016.

Therefore, I find that the landlord had the right to ask the tenant to vacate, as I have found that there was no meeting of the minds in relation to over-holding beyond the end date of the tenancy; May 31, 2016. However, the landlord did not have the right to suggest the locks would be changed to the rental unit. A landlord can only take possession of a unit if the tenant has vacated or an order of possession has been issued and properly enforced.

In relation to the claim for loss of June 2016 rent revenue I find that when the landlord decided to rely on the strict terms of the notice given by the tenant and not accept over-holding by the tenant, that the landlord failed to mitigate the loss claimed. Rather than accept the payment given by the tenant, in the sum the landlord has now claimed, the landlord insisted the tenant vacate, leaving the unit empty and the landlord without revenue. The landlord had an opportunity to mitigate and did not take advantage of that opportunity. Therefore, I find that the result was a loss of rent revenue due to a failure to mitigate as required by section 7 of the Act, and as such that the claim for loss of rent revenue is dismissed.

I find that the tenant has paid the agreed upon internet costs to March 2016; as indicated by evidence the tenant submitted proving payment in the sum of $15.00 per month. Therefore, I find that the landlord is entitled to compensation in the sum of $30.00 for internet costs for April

and May 2016. The claim for tax is dismissed as the parties had not agreed the tenant would pay more than $15.00 per month.

In relation to the tenants' claim that she was stressed by the move which caused the tenant to incur losses for medical services, truck rental cost, wages and stress and hardship; I find that the tenant has failed to prove that the landlord is responsible. I have determined there was no meeting of the minds that would allow the tenant to over-hold in the rental unit. The day after the tenant told the landlord she would not be vacating the landlord informed the tenant that they were relying on the notice given by the tenant and that the tenant must vacate. The tenant may have believed she could remain in the rental unit, but I have found that was an incorrect assumption. Therefore, I find on the balance of probabilities that any loss that resulted is the responsibility of the tenant.

This tenancy agreement did not include any sum that would be payable should the tenant have another occupant in the home. There was no dispute that the tenant's boyfriend stayed in the home, with the landlord's permission, for the month of July, 2015. A payment for July was not made. From the evidence before me I find that in August, when the boyfriend approached the landlord on his own volition, a sum of $200.00 was paid in recognition of any additional costs that temporary occupation would cause. There was no evidence before me that the landlord made a request for payment to the tenant. Therefore, I find that the payment made was one of agreement between the tenants' boyfriend and the landlord, not the landlord and tenant.

Therefore, I find that the tenants' application is dismissed.

In relation to the filing fee claimed by the landlord, I find that the claim for internet costs could easily have been dealt with if the landlord had suggested payment of the sum actually owed by the tenant. Therefore, I decline filing fee costs to the landlord.

I find, pursuant to section 72 of the Act that the landlord must return the $600.00 security deposit to the tenant; less $30.00 for internet fees.

Based on these determinations I grant the tenant a monetary order in the sum of $570.00. 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 for internet costs. The balance of the claim is dismissed.

The landlord is ordered to return the security deposit; less $30.00, to the tenant.
The tenants' application is dismissed.

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: December 16, 2016

Residential Tenancy Branch