



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

On June 30, 2017, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for unpaid rent, and damage to the rental unit. The Landlord is also requesting to keep the security deposit, and to recover the cost of the filing fee for the application.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") and the Tenant attended the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Residential Tenancy Branch ("the RTB") did not receive any documentary evidence from the Landlord in support of their application prior to the hearing. The Landlord submitted that the agent who applied for dispute resolution must have forgotten to submit documents.

The Tenants advocate submitted 16 pages of evidence to the RTB on December 15, 2017. The Landlord testified that she did not receive the Tenant's documents. The Tenants advocate testified that the Landlord gave her consent to serve the documents using email, and that the documents were sent to the email address the Landlord provided. The Tenants advocate provided a copy of an email dated December 14, 2017, to confirm the arrangement.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage and cleaning?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on January 2, 2016, as a one year fixed term tenancy. Rent in the amount of \$1,050.00 was to be paid to the Landlord on the first day of each month. The Tenant paid the Landlord a security deposit of \$525.00. The Parties testified that the Tenant moved out of the rental unit on October 1, 2016.

Loss of Rent: October 2016

The Landlord testified that the Landlord suffered a loss of rent for the month of October 2016.

The Landlord submitted that the Tenant had initially sublet another unit and had begged the Landlord to rent a unit to her. The Landlord was concerned about her ability to pay the rent but did rent a unit to her. The Landlord submitted that the Tenant was having difficulty paying the rent on time; resulting in the issuance of a couple of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that she showed goodwill to the Tenant by not evicting her on these occasions. The Landlord submitted that she spoke to the Tenant about her difficulty with paying the rent and suggested that she may want to move. The Landlord submitted that the Landlord did not issue a notice to end tenancy.

The Landlord submitted that the Tenant broke the fixed term tenancy agreement by moving out of the rental unit early without written notice. The Landlord submitted that the parties did not enter into a mutual agreement to end the tenancy.

The Landlord testified that the unit needed to be cleaned and prepared to re-rent and was subsequently was advertised for rent. The Landlord testified that the unit was rented out to a new Tenant for November 2016.

The Tenant submitted that she was struggling to pay the rent and she was told by the Landlord to move out of the unit by October 1, 2016. The Tenant submitted that she did not provide the Landlord with written notice that she was moving out.

Carpet Replacement

The Landlord testified that the Tenant left the carpets dirty at the end of the tenancy and that they could not be cleaned and had to be replaced. The Landlord is seeking \$1,620.75 for the purchase and installation cost for carpets.

In response, the Tenant testified that she cleaned the carpets and did not damage the carpets.

Cleaning

The Landlord testified that the Tenant left rental unit dirty at the end of the tenancy. The Landlord testified that it took eight hours to clean the rental unit and is seeking to recover the amount of \$320.00 for cleaning costs.

The Tenant testified that she cleaned the rental unit at the end of the tenancy. The Tenant does not agree with the Landlord's claim for cleaning costs.

Painting

The Landlord testified that the Tenant left rental unit walls dirty and the unit needed to be repainted.

The Tenant testified that she did not leave the walls of the unit dirty. The Tenant does not agree with the Landlord's claim for the painting costs.

Security Deposit

The Landlord applied for dispute resolution on June 30, 2017, asking to keep the security deposit. I find that the Landlord's application to retain the security deposit was made in compliance with timeframes contained within section 38 of the Act.

The Landlord is seeking to retain the security deposit in partial satisfaction of the claim for the loss of rent.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

Loss of Rent

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

I find that the Tenant breached the tenancy agreement by ending the fixed term tenancy early. There is no evidence that the parties entered into a written mutual agreement to end the tenancy. The Tenant is responsible to pay the rent until the property could be re-rented. I find that the Tenant is obligated to meet the terms of the fixed term tenancy agreement.

I find that the Landlord complied with the duty to mitigate the loss by attempting to re-rent the property soon after the Tenant moved out. I accept the Landlord's testimony that the rental unit was advertised and was re-rented for the month of November 2016.

I award the Landlord the amount of \$1,050.00 for the loss of rent that the Landlord suffered for the month of October 2016.

Carpet, Cleaning, and Painting

The Landlord's claims for a monetary order to recover the costs of the carpet; cleaning the unit; and painting the unit are dismissed. The Tenant refuted responsibility for these claims and the Landlord did not provide any documentary evidence to establish that there was damage; that the Landlord suffered a loss; and the value of the loss.

Security Deposit

I find that the Landlord applied for dispute resolution to keep the security deposit within 15 days of receiving the Tenant's forwarding address. I order that the Landlord can keep the security deposit in the amount of \$525.00 in partial satisfaction of the claim for the loss of October 2016, rent.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Monetary Award

I find that the Landlord has established a total monetary claim of \$1,150.00 comprised of unpaid rent; and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$525.00 towards the claim of \$1,150.00, I find that the Landlord is entitled to a monetary order in the amount of \$625.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Tenants advocate submitted that the Landlord has forwarded a monetary claim to a collections agency prior to applying for dispute resolution and receiving a Decision.

Pursuant to section 58 of the Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's Landlord or Tenant in respect of the Tenant's use, occupation or maintenance of the rental unit. The Director may determine the amount of compensation and order a party to pay compensation to another party.

The Landlord is cautioned that they must apply for dispute resolution and receive a monetary order from the director for any tenancy related claims. The Tenant is not responsible for any costs associated with of the replacement of the carpet; cleaning the unit; or painting the unit.

Conclusion

The Tenant entered into a fixed term tenancy agreement and moved out prior to the end of the fixed term. The Tenant is responsible to pay the rent owing under the agreement for October 2017, when the Landlord could not rent the unit.

The Landlord was successful with the claim for a loss of rent. The Landlords other claims are dismissed due to insufficient evidence.

I order that the Landlord can keep the security deposit in the amount of \$525.00 in partial satisfaction of the Landlords claim for the loss of rent.

The Landlord is granted a monetary order in the amount of \$625.00.

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: December 22, 2017

Residential Tenancy Branch