



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision issued on December 11, 2018 and the Interim Decision should be read in conjunction with this decision. At the outset of the reconvened hearing of January 29, 2019 I confirmed that the landlord reserved the hearing documents upon the tenants, as ordered. I also confirmed that the tenants did not submit any written response or evidence with respect to the landlord's claims and they would be providing their position(s) orally during the hearing.

Issue(s) to be Decided

Has the landlord established an entitlement to recover loss of rent from the tenants?

Background and Evidence

The landlord and the tenants executed a written tenancy agreement on July 13, 2018 for a tenancy set to commence July 28, 2018 for a fixed term of one year. The monthly rent was set at \$2,000.00 and the tenants were required to pay a security deposit of \$1,000.00. The landlord and the male tenant also executed a completed move-in inspection report on July 13, 2018.

The tenants did not pay the security deposit and on July 19, 2018 the tenant sent the landlord an email to advise the landlord they would not be moving into the rental unit

due to personal reasons. Via email, the landlord requested the tenants provide her with written notice but the tenants declined to do so and told the landlord to disregard their “tentative” agreement.

The landlord submitted that upon receiving the tenant’s email, the landlord proceeded to post advertisements for the rental unit and showed the unit to prospective tenants. The landlord also contacted persons who had previously expressed interest in renting the unit before she had entered into the tenancy agreement with the tenants. One of the previously interested persons had already signed a month-to-month tenancy agreement with another landlord and had to give a month’s notice. Despite the landlord’s efforts to find a replacement tenant for August 1, 2018, the landlord was unable to secure a suitable tenant any sooner than September 1, 2018. The landlord suffered a vacancy and loss of rent for the month of August 2018 and seeks to recover that loss from the tenants.

The tenants explained that due to personal circumstances they decided they could not move into the rental unit. The tenants thought they had five days to cancel the tenancy agreement as is the case with other types of contracts. The tenants also submitted that the landlord’s boyfriend had told them the landlord was in no hurry to rent out the unit and that it had been sitting vacant before they entered into the tenancy agreement. The tenants were also of the position that with the low vacancy rate the landlord ought to have been able to find someone to take the unit for August 1, 2018.

The landlord acknowledged the unit was vacant when they executed their tenancy agreement but that she wanted to rent the unit as soon as possible as she has expenses of ownership to cover. The landlord submitted that she did try to find replacement tenants for August 1, 2018 but that there is very little time to find suitable tenants willing to take a rental unit that quick. So, with a view to minimizing loss of rent, at the end of July 2018 she entered into a tenancy agreement with a suitable tenant that was set to commence September 1, 2018. The landlord was unaware of any five day grace period the tenants have to cancel the tenancy agreement.

Evidence provided by the landlord included: the tenancy agreement executed by the parties; the move-in inspection report executed by the parties; the email exchanges between the parties; advertisements the landlord placed; communication with prospective tenants; and, a written summary of events.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

There was no dispute that the parties executed a written tenancy agreement on July 13, 2018 for a tenancy set to commence on July 28, 2018 for a one year fixed term with rent of \$2,000.00 payable on the 28th day of every month. It is also undisputed that the tenants never did take possession or occupy the rental unit and notified the landlord of their intention not to do so on July 19, 2018, via email.

The tenants submitted that they may have had up to five days to cancel the tenancy agreement as is the case for other types of contracts. While the tenants did not provide me with a specific statute or common law to illustrate this point, the *Residential Tenancy Act* applies to landlords and tenants and their agreements with respect to a rental unit. Section 91 of the Act provides that the common law does apply to a landlord and tenant in British Columbia “Except as modified or varied under this Act”.

Section 16 of the Act provides for when parties become bound to fulfill their terms of tenancy. Section 16 provides as follows:

Start of rights and obligations under tenancy agreement

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Pursuant to section 16 of the Act, I find that the parties became obligated to fulfill the terms of their tenancy agreement effective July 13, 2018 – the day the tenancy agreement was executed by both parties. The agreement executed by the parties on July 13, 2018 is not a “tentative” agreement as described by the tenants. Rather, it was a legally binding contract that obligated the landlord to provide the tenants with possession of the rental unit on July 28, 2018 and obligated the tenants to pay the landlord rent of \$2,000.00 on July 28, 2018. It is the tenants in this case that chose not to take possession of the unit and they did not pay the landlord the agreed upon rent. As such, I find it is the tenants who breached the tenancy agreement.

Section 44 of the Act provides for all of the ways a party may lawfully end a tenancy agreement. Sending an email 9 days before the rent is due is not one of the permissible ways to end a tenancy under the Act. Therefore, I find the tenants did not bring the tenancy to an end in a lawful way.

In light of the above, I find the tenants breached their tenancy agreement and the Act by failing to pay rent of \$2,000.00 that they were obligated to pay under the terms of their agreement and failing to bring the tenancy agreement to an end in a lawful way permitted under the Act.

The landlord submitted that the tenant’s breach of the tenancy agreement and the Act caused her to suffer a vacancy for the month of August 2018 because a suitable replacement tenancy did not commence until September 1, 2018 and the landlord seeks to recover the loss of rent of \$2,000.00 that the tenants were obligated to pay. The tenants questioned whether the landlord did enough to secure a replacement tenant and I consider this point in analyzing whether the landlord sufficiently mitigated losses.

The requirement to mitigate losses is described in the four part test described earlier in this analysis. The landlord is obligated to do “whatever is reasonable to minimize the damage or loss”. It is important to point out that use of the word “reasonable” is used in the Act and must be given meaning. Being “reasonable” in the circumstances means the landlord is required to take reasonable measures and undertake reasonable action to mitigate losses. In cases where the landlord is attempting to secure a replacement tenant, this usually means the landlord will advertise the unit for rent, show the unit to prospective tenants, and enter into a tenancy agreement with a suitable tenant. The landlord does not have to do everything and anything possible to secure a replacement tenant such as entering into a tenancy agreement with an unsuitable tenant or waiting until the very last minute to see if a different person will take the unit for August 1, 2018. Accordingly, I find the landlord was not obligated to accept just anybody willing to take

the unit for August 1, 2018 but that she remained entitled to secure a suitable tenant after screening and doing checks on prospective tenants. Also, of consideration is that receiving the tenant's notice on July 19, 2018 is very late in the month to expect to secure a suitable replacement tenant for the upcoming month. All things considered, I find the landlord acted very reasonably in contacting previous prospective tenants, posting an advertisement in a very timely manner, and showing the unit to prospective tenants. Therefore, I find I am satisfied the landlord did everything reasonable to mitigate losses.

Given all of the above, I find the landlord has established an entitlement to recover loss of rent of \$2,000.00 from the tenants and I award that amount to the landlord. I further award the landlord recovery of the \$100.00 filing fee she paid for this Application. Therefore, the landlord is provided a Monetary Order in the sum of \$2,100.00 to serve and enforce upon the tenants.

Conclusion

The landlord is provided a Monetary Order in the sum of \$2,100.00 to serve and enforce upon the tenants.

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: February 13, 2019

Residential Tenancy Branch