



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes **FFL MNRL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- ~~Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;~~
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant MW attended for the tenants (“the tenants”). The agent and property manager HH EH attended for the landlord (“the landlord”). The tenant acknowledged receipt of the landlord’s materials. No issues of service were raised. I find the landlord served the tenant in accordance with the *Act*.

Security Deposit

The landlord acknowledged receipt of the security deposit in a previous Decision to which reference is made on the first page. ~~As the issued of the security deposit has been previously dealt with, the landlord’s claim was dismissed in this regard without leave to reapply.~~

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on March 1, 2018 on a 1-year fixed term ending on **February 28 April 30**, 2019. A copy of the agreement dated February 1, 2018 was submitted as evidence. The monthly rent was \$2,750.00 payable on the 1st day of each month. A security deposit of \$1,375.00 and a pet damage deposit of \$250.00 were paid. The tenant vacated the unit on October 31, 2018 after providing one month’s notice because the landlord advertised the property for sale.

In a previous Decision dated March 11, 2019, the landlord was granted a monetary order for unpaid rent and utilities with authorization to apply the security deposit to the monetary award for a final order for the remaining balance of \$2,406.98. as mentioned earlier, the Decision is referenced on the first page.

The landlord testified that as soon as the tenants submitted one month’s notice of their intention to vacate on October 31, 2018, the landlord advertised the unit on the firm’s website and other websites and continued to do so until January 2, 2019. Th unit was shown during the last month of the tenancy to prospective new occupants. The landlord testified that on January 2, 2019, new occupants for the unit were located and a lease was signed effective February 22, 2019 for a reduced rental of \$2,650.00.

The landlord claims compensation for four months of lost rental (November 2018, December 2018, January 2019 and February 2019).

The landlord submitted testimony that the rent was reduced by \$25.00 on four occasions from November 1, ~~2019~~ **2018** on each of the following date: November 1, 2018, December 1, 2018 and January 1, 2019. The landlord submitted evidence of the number of viewers of the unit for each of the four vacant months as well as the final

month of occupancy. The landlord submitted copies of two online advertisements and a copy of an internal “grid” which provides each of the firm’s agents with information that the unit was available.

The parties agreed the home was “lovely” and “well situated”. The unit was in good condition and clean when showed to prospective tenants.

The landlord testified to doing everything possible to find replacement tenants for the unit. The landlord stated that all normal procedures to find tenants were followed. The landlord stated she did not understand why the unit did not rent again quickly and why it was vacant for four months. The landlord did not provide an explanation for the failure of the unit to rent during the last month of the tenancy or the subsequent four months except that prospective families are not eager to move during a school year or soon before/after seasonal holidays.

The tenant objected to paying four months rent for the time the unit was vacant and testified that if the landlord had made reasonable efforts, the unit would have been rented to replacement tenants right away. The tenant stated that the rent reductions were not enough. The tenant also stated that he searched the landlord’s web site, that is the website of the property manager present at the hearing and could not find the unit advertised. The landlord testified that the unit was advertised on the firm’s website; however, no copy of the advertisement or screen shot was submitted.

Analysis

A tenant may not legally end a fixed term tenancy agreement except in a few limited and specific circumstances provided under the *Act*, which are cases where the landlord has violated a material term of a tenancy agreement; a tenant is fleeing domestic violence or going into a care home; or, as authorized by the Director. The tenant’s reasons for ending the tenancy do not constitute a legal basis for ending the fixed term early and I find it is undeniable that the tenant breached their tenancy agreement by ending the tenancy early.

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent up to the end of the fixed term. Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses.

Section 7 of the Act imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

Liability for not complying with this Act or a tenancy agreement

*7 (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.** (emphasis added)*

The primary focus in this claim is whether the landlord met its burden to mitigate loss of rent.

Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

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.

In this case, it is noteworthy that the unit was not occupied again until the rent was reduced by \$75.00 after over two months of vacancy

The landlord testified that the landlord showed the unit unsuccessfully to prospective tenants in the last month of the tenant's occupancy. I find that the landlord should have become aware that the rental requested was too high and families were not willing to move into such a large home at that rental rate and at that time of the year. I find that the reduction of the rent on three occasions by a mere \$25.00 to have been insufficient mitigation of damages. I accordingly find that the landlord did not *mitigate the loss by re-renting the premises at a reasonably economic rent*, as required under the above Guideline.

I am not satisfied the landlord has met the burden of proof on a balance of probabilities that the landlord made reasonable efforts to mitigate losses as required under the *Act*.

I therefore dismiss the landlord's claims without leave to reapply.

As the landlord has not been successful in this action, I dismiss the landlord's claim for reimbursement of the filing fee.

Conclusion

I dismiss the landlord's claims without leave to reapply.

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: August 29, 2019

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

