



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for loss of revenue for the month of February; for liquidated damages in the amount of \$400.00; for compensation for cleaning the carpets; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a written tenancy agreement that indicates that this was a fixed term tenancy that began on September 01, 2008 and was scheduled to end on August 31, 2009. The Tenant acknowledged that her initials appear in the circle beside section 4 of the tenancy agreement, which outlines the duration of the fixed term tenancy and stipulates that the tenant will pay \$400.00 in liquidated damages if the tenancy ends before August 31, 2009.

The Tenant stated that she verbally advised the Building Manager, on at least three occasions, that she did not wish to sign a lease. She stated that she did not get a copy of the tenancy agreement at the beginning of this tenancy. She stated that the tenancy agreement has been altered since she signed it, as the tenancy agreement she signed did not indicate that the tenancy was for a 12 month term, or that the tenancy was ending on August 31, 2009. Specifically, she stated that when she signed the tenancy agreement there was no notation that this tenancy agreement was for a 12 months term

or that the tenancy ended on August 31, 2009, as is stipulated in section 4 of the agreement.

The Tenant called a witness, who is a personal friend. The witness for the tenant stated that he was present in the suite when the Tenant viewed the rental unit, at which time he heard her tell the Building Manager that she did not wish to enter into a lease. He stated that he was also present in the office when the Tenant signed the tenancy agreement, at which time he heard the Tenant tell the Building Manager, on at least two occasions, that she did not wish to sign a lease.

The Building Manager stated that all of the rental units in the building are subject to a one year fixed term tenancy; that he does not recall the Tenant telling him that she did not wish to enter into a fixed term tenancy; that he does not have the authority to rent on a month-to-month basis; and that he never altered the tenancy agreement after it was signed by the Tenant.

The Agent for the Landlord and the Tenant agree that the monthly rent is \$1,075.00. The tenancy agreement shows, in two locations, that the Tenant paid a security deposit of \$537.50, although the amount was amended at one of those locations. The Tenant has initialled the tenancy agreement near the location on the agreement where it shows the Tenant paid \$537.50 on August 29, 2008.

The Building Manager stated that he recalls the witness for the Tenant giving him a cheque for \$525.00 and that the remainder of the deposit was paid in cash. The Tenant contends that she only paid \$525.00 and that the tenancy agreement was altered to indicate that she paid more, although she can not explain why the Landlord would alter the agreement in a manner that was detrimental to the Landlord.

The parties agree that the tenancy ended on January 29, 2009 after the Tenant gave the Landlord one full month's written notice. The Landlord is claiming compensation, in the amount of \$1,075.00, for loss of revenue from the month of February. The Agent for the Landlord stated that they made reasonable efforts to find new tenants for the rental unit, however the unit remained vacant until March 01, 2008.

The Tenant argued that the Landlord would not have rented the rental unit for February of 2009 even if new tenants could have been located, as the Landlord was seeking compensation from the Tenant for loss of revenue. She based this opinion on her experience at the beginning of the tenancy when the Landlord told her that she could not move into the rental unit on August 15, 2009 because the Landlord was "suing" a previous tenant for loss of revenue. The Tenant contends that the previous behaviour of the Landlord indicates that they have a history of failing to mitigate their losses in relation to loss of revenue.

The Agent for the Landlord stated that the previous tenant vacated this rental unit on August 12, 2008. She stated that she has no knowledge of the Landlord seeking compensation for loss of revenue from the previous Tenant. Residential Tenancy Branch records indicate that no other Applications for Dispute Resolution were filed in relation to this rental unit in 2008.

The Landlord is seeking to enforce the clause in the tenancy agreement that provides for the payment of \$400.00 in the event that fixed term tenancy is ended early. The Tenant contends that this portion of the agreement was blank when she signed the tenancy agreement. She contends that she would not have agreed to pay liquidated damages, as she had not agreed to a fixed term tenancy.

The Landlord is seeking compensation, in the amount of \$115.50, for cleaning the carpets. The Landlord submitted a copy of a receipt to show that this expense was incurred. The Tenant agreed that she did not clean the carpets and she agreed to compensate the Landlord for this expense.

Analysis

I find that the written tenancy agreement is the most reliable means of determining the intent of the parties at the beginning of the tenancy, particularly when there is a dispute about the verbal agreements that were made. Therefore, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on September 01, 2008 and was scheduled to end on August 31, 2009; that the Tenant agreed to pay liquidated damages of \$400.00 if the tenancy ended early; that the Tenant paid a security deposit of \$537.50 on August 29, 2009; and that the tenancy agreement required the Tenant to pay monthly rent of \$1,075.00.

I find the testimony of the Tenant and her witness, who contend that the Tenant clearly advised the Building Manager that the Tenant did not wish to enter into a fixed term tenancy, to be less compelling than the evidence presented by the Landlord in regards to the fixed term of the tenancy. In reaching this conclusion, I considered the following:

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- The written tenancy agreement that was signed by the Tenant on August 29, 2008, which clearly outlines this is a fixed term tenancy agreement
- The fact that the Tenant initialed the tenancy agreement right beside the sentence that stipulates the rental period will be for twelve months
- The fact that there would be no need to place initials beside this sentence if the sentence was blank, as alleged by the Tenant
- The testimony of the Building manager, who stated that he did not alter the terms of the tenancy agreement after it was signed by the Tenant
- The absence of evidence that corroborates the Tenant's statement that the tenancy agreement was altered after she signed it
- The testimony of the Building Manager who stated that he does not recall the Tenant telling him that she did not wish to enter into a fixed term tenancy agreement
- The testimony of the Building Manager, who stated that he does not have the authority to enter into a month-to-month tenancy agreement.

I find that the Tenant did not comply with section 45(2) of the *Residential Tenancy Act* (Act) when she vacated the rental unit prior to the end of the tenancy. I find that the Tenant's actions resulted in a loss of one month's rental income, which is \$1,075.00, as the rental unit was vacant for a period of one month. I find that the Tenant submitted insufficient evidence to show that the Landlord did not make reasonable attempts to find a new tenant for February and I therefore find that the Landlord is entitled to compensation for loss of revenue from the month of February of 2009. In reaching this conclusion, I gave no consideration to the Tenant's argument that the Landlord had previously failed to mitigate a loss of revenue in relation to this rental unit, as the Tenant submitted no evidence to corroborate her statements regarding those allegations.

I previously determined that the Tenant entered into a fixed term tenancy agreement, and that there was insufficient evidence to establish that the tenancy agreement had been altered. For the same reasons, I find that there is insufficient evidence to establish that the terms in relation to the liquidated damages have been altered, and I find that the tenancy agreement should be accepted at face value. I therefore find that the Tenant did agree to pay liquidated damages of \$400.00 if she ended the fixed term tenancy early; that the fixed term tenancy agreement did end early; and that the Tenant is, therefore, liable to pay \$400.00 in liquidated damages. In reaching this conclusion, I note that the Tenant unsuccessfully argued that she did not agree to the liquidated damages clause. She did not attempt to argue that the clause itself is not enforceable, and I find no reason to conclude that it was not a genuine pre-estimate of the costs of ending the tenancy early.



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As the Tenant agreed that the Landlord is entitled to compensation, in the amount of \$115.50 for cleaning the carpet, I find that the Landlord is entitled to compensation in that amount.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,640.50, which is comprised on \$400.00 in liquidated damages, \$1,075.00 in loss of revenue, \$115.50 for cleaning the carpet and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the Tenant's security deposit of \$537.50, plus interest in the amount of \$2.75, in partial satisfaction of this monetary claim. Based on these determinations I grant the Landlord a monetary Order for the amount \$1,100.25. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: April 27, 2009.

Dispute Resolution Officer