



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross-applications. The landlord applied to retain \$1,075.00 of the tenant's security deposit for unpaid rent and recovery of the filing fee. The tenant applied for return of double his security deposit and pet deposit in the amount of \$8,000.00 and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

At the commencement of the hearing, both parties acknowledged that documentary evidence was served upon the other party by email. Some evidence was served late. Both parties had acknowledged receiving the evidence submitted by the other party, having the opportunity to review it and indicated that they were prepared to respond to the evidence at the hearing. As the parties were willing to accept service of the documents even though they were not served in accordance with the service provisions established in the Rules of Procedure, I deemed all documentary evidence to be sufficiently served upon the other party and I have reviewed all relevant documents in reaching my decision.

Issues(s) to be Decided

1. Is the landlord entitled to recover unpaid rent or loss of rent for the period March 24, 2009 through March 31, 2009?
2. Is the tenant entitled to return of double his security deposit and pet deposit?
3. Award of the filing fee(s).

Background and Evidence

Upon review of the documentary evidence and undisputed submissions, I make the following findings. The tenancy commenced on October 24, 2008. The tenant was required to pay rent of \$4,300.00 on the 24th day of every month for a fixed term of one year and one week ending October 31, 2009. The tenant paid a \$2,150.00 security deposit and a \$2,150.00 pet deposit on or about September 12, 2008. The tenant vacated the rental unit on March 22, 2009. The tenant paid rent for the month ending March 23, 2009 but cancelled the rent cheque dated March 24, 2009.

The landlord is seeking compensation of \$1,075.00 from the tenant for rent owing for the period March 24 – 31, 2009. The landlord submitted that the parties had mutually agreed the tenancy would end on March 31, 2009 during a previous dispute resolution proceeding and the landlord was provided an Order of Possession effective March 31, 2009.

The tenant submitted that his tenancy ran until the 24th of every month and since the tenant vacated March 22, 2009 and returned the keys to the landlord's lawyer's office on March 23, 2009 the tenant was of the position he did not owe rent for the next rental period starting March 24, 2009. The tenant also submitted that the rental unit had insufficient heat and the BC Safety Authority had detected three safety violations during an inspection of February 26, 2009 and the tenant felt it unsafe to remain in the rental unit. The tenant opined that the landlord's failure to perform emergency repairs was grounds to end the tenancy agreement.

Among other documents, a copy of an interim dispute resolution decision dated February 24, 2009 was provided as evidence. It provides that a hearing was held on February 18, 2009 in response to the tenant's application to cancel a Notice to End

Tenancy for Cause, among other issues. The Dispute Resolution Officer noted that at the hearing the tenant advised that he “would be vacating the rental unit on March 31, 2009 pursuant to the notice to end tenancy” and “as the tenant intends to vacate the rental unit pursuant to the notice to end tenancy, I consider his application to set aside the notice to be withdrawn.”

For this hearing, neither party provided a copy of the Notice to End Tenancy; however, both parties were in agreement that it was a 1 Month Notice to End Tenancy for Cause with an effective date of March 31, 2009 and that the Notice was served upon the tenant in early February 2009. Upon enquiry, the landlord could not explain why the landlord indicated an effective date of March 31, 2009 since the rental period ran from the 24th to the 23rd of every month except to say that it was at least 30 days of notice.

The tenant testified that he decided to accept the Notice without acknowledgement of causing the end of the tenancy as the tenancy relationship had deteriorated significantly, to the point where police became involved, and that the heat in the rental unit was inadequate; however, the tenant explained that he did not notice the effective date was March 31, 2009. The tenant was of the position that the landlord got everything he wanted by ending the tenancy and selling the house and does not accept that he is responsible for paying rent for any days past March 23, 2009.

Upon enquiry, the landlord testified that during the last week of March 2009 the landlord attended the property with a repairman and entered with a 24 hour notice but the landlord was of the position he could not rent the unit until April 2009 as the tenant had legal possession of the unit until March 31, 2009. The landlord testified he tried to re-rent the unit for April 1, 2009 by advertising on Craigslist but could not find tenants interested in a short term rental. The landlord explained that he wanted a short term

rental because the house was for sale. In mid-April 2009 the landlord decided to move into the rental unit and did so near the end of April 2009. The landlord received an accepted offer to purchase the property in mid June 2009. The landlord did not provide documentary evidence showing any postings on Craigslist for today's hearing.

The landlord referred to the tenant's notice provided in an email of March 22, 2009 in which the tenant states "since our tenancy ends at the end of the month and we've paid fully all our rent we will expect that you will return our rent paid for the unused portion and also our hotel expenses." The landlord submitted that this sentence shows that the tenant acknowledged the tenancy continued until March 31, 2009. The tenant refuted the landlord's position by stating that his reference to the end of the month was March 24, 2009 and he was referring to the two days between March 22 and March 24, 2009 in requesting reimbursement of rent paid and unused.

Analysis

The landlord submitted that the tenancy ended March 31, 2009 pursuant to the mutual agreement and Order of Possession. Section 44 of the Act provides for the ways a tenancy ends, including:

- a) by way of a landlord giving a tenant a Notice to End Tenancy for Cause under section 47 of the Act,
- b) when a tenant vacates or abandons a rental unit,
- c) the landlord and tenant mutually agree to end the tenancy in writing, or
- d) upon the Order of the director.

It is common for more than one reason to apply at the end of a tenancy; however, a tenancy must end on one date, not several. Therefore, where more than one reason

may be applicable under section 44 I find that the first event determines the end of the tenancy.

Upon my review of the dispute resolution interim decision of February 24, 2009, I do not find the decision provides that a mutual agreement to end the tenancy on March 31, 2009 was reached between the parties. Rather, I find that the decision reflects the tenant accepted that the tenancy would end pursuant to the Notice to End Tenancy issued by the landlord, without acknowledging he gave the landlord cause to end the tenancy. Nor did I find the Dispute Resolution Officer ordered the end of the tenancy, rather the Dispute Resolution Officer was providing a means for the landlord to ensure possession was returned to the landlord pursuant to the Notice to End Tenancy that was no longer in dispute.

I heard undisputed testimony that the Notice to End Tenancy for Cause had an effective date of March 31, 2009. An effective date of March 31, 2009 does not comply with the requirements of section 47(2)(b) which provides that the effective date must be “the day before the day in the month...that rent is payable under the tenancy agreement”. As the rent is payable on the 24th of the month under the tenancy agreement, the effective date should have read the 23rd of a month, not the last day in a calendar month.

Unfortunately, the incorrect effective date was not raised as an issue at the previous dispute resolution proceeding and not identified to be incorrect by the Dispute Resolution Officer. However, under section 53 of the Act, an incorrect effective date is automatically changed to comply with the required notice period. Having heard that the Notice was served upon the tenant in early February 2009 I find that the effective date automatically changed to read March 23, 2009 in accordance with section 53(3)(a) of the Act.

Upon considering that the tenancy ran from the 24th to the 23rd of the month, that the effective date on the Notice to End Tenancy was automatically changed to read March 23, 2009 and that the tenant returned possession of the rental unit and the keys to the landlord on or before March 23, 2009 I find the tenancy ended March 23, 2009.

As the tenancy ended March 23, 2009 which is the last day of the monthly rental period, the landlord is not entitled to unpaid rent beyond March 23, 2009. However, I have considered whether the landlord is entitled to damages or loss for the period of March 24 – 31, 2009.

I find that in order to justify payment of compensation for damages or loss under section 67 of the Act, the applicant is required to prove that the other party did not comply with the Act, regulations, or tenancy agreement and that this non-compliance resulted in costs or losses to the applicant, pursuant to section 7 of the Act.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions of the respondent violated the Act, regulations or tenancy agreement,
3. Verification of the actual monetary amounts to compensate for the claimed loss or to rectify the damage, and,
4. Proof the applicant did whatever was reasonable to minimize the damage or loss.

Upon consideration of the evidence before me, I do not find the tenant violated the Act, regulations, or tenancy agreement by moving out of the rental unit on the effective date of the Notice to End Tenancy. I find the landlord provided insufficient evidence that he tried to minimize his loss or damage in advertising the rental unit. In this case, I do not find the landlord was prevented from entering or re-renting the rental unit until April 2009 as the landlord legally regained possession on March 23, 2009 when the tenant gave up possession of the rental unit.

I find that the dispute concerning the date the tenancy ended and the landlord's belief that he was entitled to rent until March 31, 2009 was largely due to the incorrect effective date on the Notice to End Tenancy issued by the landlord. In my opinion, had the landlord issued a Notice to End Tenancy with the correct effective date appearing on the Notice, this matter would not have become an issue. Clearly, it is unjust that a landlord would be able to choose any date to end a tenancy as any date other than the last day in the rental period would result in the tenant having to pay another month of rent. Rather, an effective date that falls on the last day of the rental period is logical and just, it is what is required by the legislation and is the date that will be relied upon with this decision.

In light of the above findings, I do not find the landlord has established an entitlement to compensation from the tenant for damage or loss under the Act. Therefore, I dismiss the landlord's request to retain \$1,075.00 from the tenant's security deposit. **The landlord is hereby ordered to return the tenant's security deposit of \$2,150.00 and pet deposit of \$2,150.00, plus accrued interest of \$19.56, to the tenant forthwith.**

As the tenant was informed during the hearing, the provision for double the security deposit and pet deposit applies where a landlord fails to return or apply to retain a

security deposit or pet deposit within 15 days of the tenancy ending or the tenant providing a forwarding address in writing. Since I have found that the tenancy ended on March 23, 2009 the landlord complied with the Act by applying to retain a portion of the deposits within 15 days, on April 3, 2009, and the tenant is not entitled to double the amount of the deposits.

To ensure return of the deposits, the tenant is provided with a Monetary Order in the amount of \$4,319.56. To enforce payment, the tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

I make no award for return of the filing fees paid by each party as the landlord's application was not successful and the tenant's request for return of double the deposit was not successful. Return of the full amount of the tenant's security deposit and pet deposit would have been dealt with by way of the landlord's application.

Conclusion

The landlord's application is dismissed. The tenant is entitled to return of his security deposit and pet deposit, along with accrued interest. The tenant has been provided a Monetary Order in the amount of \$4,319.56 to serve upon the landlord.

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: July 03, 2009.

Dispute Resolution Officer