



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MND, MNDC, FF, O
MNDC, FF, O

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for a loss of rental income, for carpet cleaning expenses, interest charges and to recover the filing fee for this proceeding. As the tenancy ended prior to the date when the Landlord filed his application, his application for an Order of Possession is dismissed without leave to reapply.

The Tenant applied for a monetary order for the amount of 2 post dated cheques that were cashed by the Landlord after the tenancy ended as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and carpet cleaning expenses and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on February 1, 2008 and was supposed to expire on January 31, 2009 however it ended on July 31, 2008 when the Tenant moved out. Rent was \$950.00 per month plus \$20.00 for internet.

The Parties agree that in June of 2008, the Tenant verbally advised the Landlord that he would be moving out and that the Landlord asked him to provide written notice but that he did not. The Tenant claimed that he initially told the Landlord that he would be moving out on July 15, 2008 because the rental unit was too noisy but later advised the Landlord that he would be moving out on July 31, 2008. The Tenant also claimed that when the Landlord did not show up for a move out inspection on July 31, 2008, he called the Landlord who advised him to leave the keys to the rental unit in the mail box. The Landlord claimed that the Tenant told him that he was not sure when he would be moving out and that he only discovered on October 17, 2008 that the Tenant had moved out.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord claimed that the Tenant gave him a cheque for August and September 2008 but that when he tried to cash them they would not clear. The Landlord admitted that he also tried to cash 4 post dated cheques for October, November and December 2008 and January 2009 in the amount of \$970.00 each but that only the latter 2 cheques went through. In his written submissions, the Landlord claimed that he tried to re-rent the rental unit on Craig's List as of mid-November 2008 but that he could not find another tenant until February 15, 2009 after reducing the rent to \$950.00 from \$970.00. At the hearing the Landlord claimed that advertised the rental unit for rent at the beginning of November 2009.

The Landlord also claimed that the Tenant did not have the carpets professionally cleaned at the end of the tenancy and claimed that they were stained. In support, the Landlord provided photographs of the carpet and a copy of a move out condition inspection report that he completed without the Tenant on October 17, 2008. The Tenant argued that the Landlord's photographs were unreliable because the carpets were clean when he moved out. The Tenant also claimed that he did not have pets or smoke during the tenancy.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

Although the Parties agree that the Tenant ended the tenancy early, I find that the Landlord knew that the Tenant was moving out at the end of July 2008 and agreed to end the tenancy early. Where the evidence of the Parties differed on this point, I preferred the evidence of the Tenant as I did not find the Landlord's evidence credible. For example, the Landlord claimed that he did not know the Tenant had moved out at the end of July 2008. The Landlord also claimed, however, that the Tenant told him in June 2008 he would be moving out in July 2008 but then claimed that the Tenant said he did not know when he would be moving out.

In a decision issued on March 12, 2009, the Landlord was ordered to return 4 post dated cheques to the Tenant. The Landlord claimed that he inadvertently cashed these cheques before he received a copy of that decision. However, based on the copies of the Tenant's bank account statement, I find that this is not true and that the Landlord attempted to cash the post dated cheques as follows:



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

October 2008 rent cheque:	July 2, 2009;
November 2008 rent cheque:	June 29, 2009;
December 2008 rent cheque:	May 22, 2009;
January 2009 rent cheque:	March 31, 2009

The Landlord further claimed that the Tenant did not pay rent for August and September 2008 but then claimed that the Tenant gave him post-dated cheques for those months but that he had lost them. The Landlord later claimed that he had those cheques but that he did not cash them because he believed the Tenant had put a stop payment on them but had taken no steps to determine if that was the case. The Tenant's bank statement shows that his rent cheques for all other months were presented for payment by the Landlord at the beginning of each month. Consequently, I conclude that the Landlord did not cash the cheques for August and September 2008 because he knew the tenancy had ended. Similarly, I find that it was not until a further 5 months after the Landlord claimed he discovered the Tenant moved out that he tried to cash the rest of the Tenant's post dated cheques (with full knowledge that he was not entitled to do so).

Consequently, I find that there is no unpaid rent for August and September 2008 and that the Landlord is not entitled to a loss of rental income for the unexpired term of the tenancy. I further find that the Landlord was not entitled to cash the Tenants cheques for December 2008 and January 2009 and as a result, the Tenant is entitled to recover \$1,940.00 as well as his \$50.00 filing fee for this proceeding.

Given my findings that the Landlord knew the Tenant was moving out at the end of July 2008, I find that the Landlord took no steps to conduct a move out condition inspection report with the Tenant on that day as required by s. 35 of the Act. Consequently, I give little weight to the condition inspection report completed by the Landlord on October 17, 2008 or the photographs he claims he took on that day.

The Landlord claimed that the tenancy agreement provides that the Tenant must have the carpets professionally cleaned at the end of a tenancy. However, RTB Policy Guideline #1 (Responsibility for Residential Premises) says at p. 2 that generally a tenant will be responsible for cleaning carpets **after a tenancy of one year** unless the Tenant has stained the carpets, had pets or smoked. Section 5 of the Act says that any attempt to avoid or contract out of the Act is of no effect.

The Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant stained the carpet. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof. In this case, the tenancy lasted only 6 months and the Tenant did not smoke or have pets. The Tenant also denied that he stained the



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

carpet. As I find the Landlord's condition inspection report or photographs unreliable (because they were allegedly taken 2 ½ months after the tenancy ended), I give them little weight. In the absence of any other corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that the Tenant stained the carpet and his claim for carpet cleaning expenses is dismissed without leave to reapply.

As the Landlord has not made out a claim for a loss of rental income, his claim for interest on that income is also dismissed without leave to apply as is his claim to recover the filing fee for this proceeding.

Conclusion

The Landlord's application is dismissed without leave to reapply. A monetary order in the amount of **\$1,990.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: February 17, 2010.

Dispute Resolution Officer