

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This is a reconvened Hearing of the Landlord's application for a monetary order for unpaid rent and damages; to apply the security deposit towards partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant. The Hearing was reconvened from February 11, 2010, for both parties to provide a copy of the tenancy agreement.

All parties gave affirmed testimony.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and damages to the rental unit?
- Disposition of the security deposit.

Background and Evidence

The tenancy started on October 1, 2008 and ended on September 30, 2009. Monthly rent was \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00 on September 9, 2008.

The Landlord's agent LA testified that on September 17, 2008, the Tenant provided verbal notice that he was moving out effective September 30, 2010, which was not sufficient notice under the Act.

The Tenant testified that he was not required to give any notice, as the tenancy was for a fixed term and was not renewed before 30 days of the end of the tenancy, as provided in the tenancy agreement.

The Landlord's agent CL testified that she and the Tenant entered into a verbal tenancy agreement on September 2, 2008, that the tenancy would continue on a month-to-month basis. The Tenant denied any such agreement.

The Landlord's application is also for a monetary order for cleaning and damages to the rental unit, for a total claim (including the Landlord's claim for loss of rent) of \$2,500.00. The Landlord's agent stated that he understood the reconvened Hearing was for the purposes of determining the term of the tenancy and therefore did not provide any documentary evidence for a claim for damages. The Landlord's agent stated that he would file another Application with respect to the Landlord's damage claim.

Analysis

Clause 4 of the tenancy agreement states:

The tenancy created by this Agreement starts on October 1, 2008, and is for a fixed term ending September 30, 2009. At the end of this time the tenancy is ended and the tenant must move OR a new Tenancy Agreement must be started 30 days prior to expiry of the current Tenancy Agreement and is agreeable to both (the Landlord) and the Tenant. (The Landlord) reserves the right to start a new Tenancy Agreement with the Tenant.

When a tenancy agreement provides that the tenancy ends on a certain date, without the additional provision that it can continue on a month-to-month basis thereafter without the requirement of entering into a new tenancy agreement, there is no requirement for the Tenant or the Landlord to provide the other party with a Notice to end the tenancy. It simply ends on the last day of the term.

The Landlord's agent submitted that a new oral month-to-month tenancy agreement was entered into on September 2, 2010, and therefore the Tenant was required to provide one month's written notice of his intent to end the tenancy. The Tenant disputed that any such oral agreement had taken place.

Section 13 of the Act provides that tenancy agreements must be in writing. However, the Act defines a tenancy agreement, as follows:

"tenancy agreement" means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common

areas and services and facilities, and includes a licence to occupy a rental unit

(my emphasis)

When both parties agree upon the terms of an oral tenancy agreement, there is no reason why the oral agreement cannot be enforced. However, in this case there is no agreement by the Tenant that a new tenancy agreement was entered into. I therefore find that there was no new tenancy agreement entered into between the parties. I further find that the tenancy ended on September 30, 2009, without the requirement of the Tenant to provide notice that he was ending the tenancy. Therefore the Landlord is not entitled to loss of rent for the month of October, 2009, and this portion of the Landlord's claim is dismissed.

In its Application for Dispute Resolution filed October 16, 2009, the Landlord applied for a monetary order for damages to the rental unit and stated in the Application that photographs would be provided as evidence. Documentary evidence must be provided to the Residential Tenancy Branch and to the other party at least five clear business days before the Hearing. The Hearing was scheduled for February 12, 2010. No photographs, or any other documentary evidence, were provided within the required time frame. Therefore, the Landlord has not provided sufficient evidence to support this portion of its claim and its application for a monetary award for damages is dismissed without leave to reapply.

The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenant.

The Landlord is holding the Tenant's security deposit. I hereby order that the Landlord return the security deposit, together with accrued interest in the amount of \$2.22, to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

The Tenant is hereby provided with a Monetary Order in the amount of \$477.22. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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.

March 12, 2010

Date of Decision
