



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an order of possession based on a breach of the tenancy agreement, for monetary orders for damage to the rental unit, to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the tenancy agreement or Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on March 1, 2010, was for a fixed term ending on July 31, 2010, and both the Tenants had initialled the box in the tenancy agreement which indicates they had agreed that at the end of the tenancy they must vacate the rental unit (the "Tenancy Agreement"). The rent for the rental unit was set at \$1,450.00 and the Tenants paid a security deposit of \$725.00 and a pet damage deposit of \$725.00 on or about June 15, 2009, according to the Tenancy Agreement.

The Tenants had entered into the Tenancy Agreement with their prior landlord. The current Landlord, the Applicant here, had purchased the rental unit property from the prior landlord on July 7, 2010. I note the prior landlord appeared as a witness for the Tenants during the hearing.

Around the time the Landlord had purchased the property, he and the Tenants began negotiating a new agreement for the tenancy to continue in the rental unit.

It was clear from the testimony of both parties that, at least initially, there was an opportunity for the Tenants and the Landlord to come to a new agreement.

The Landlord testified he wanted to obtain more rent for the rental unit and was seeking approximately \$1,650.00 in rent for the unit from the Tenants, and was willing to try a three month term agreement. The Landlord testified he tried to negotiate a new lease with the Tenants but there were a series of minor incidents which caused the parties not to be able to come to an agreement. The Landlord testified that the Tenant had also sent him inflammatory emails.

The Landlord testified he then informed the Tenants the Tenancy Agreement was coming to an end and he wanted them to vacate pursuant to the Tenancy Agreement and filed this Application on July 5, 2010.

Following this the male Tenant, who appeared at this hearing, went to the Landlord's place of employment and this resulted in a disturbance at the employer's office. The Landlord testified he believed the Tenant was attempting to have the Landlord's employment terminated. The Landlord testified that the Tenant had used foul language and created a scene at his office.

The Landlord called the police, who apparently visited the Tenants to discuss the incident at the office. The Landlord testified that the police had informed him to have no further communications with the Tenants, except through the Residential Tenancy Branch hearing.

The Tenant testified that he went to the Landlord's office to drop off a cheque for August 2010 rent. He admitted that he is not a perfect person and may have lost his temper because the Landlord had threatened to have the sheriffs come to the rental unit to evict him and his family. The Tenant testified that when he tried to give the cheque to an employee at the Landlord's place of employment, he tried to explain what the Landlord was trying to do to the Tenants. According to the testimony of the Tenant this employee

got mad and the Tenant left. The Tenant testified that the Landlord had returned the cheque.

The Tenant testified that he had given up opportunities to rent in a housing co-op because he thought he would be living in the rental unit for another three months.

The Tenant testified he had initially agreed to pay the Landlord \$1,450.00 per month, and would allow the Landlord to deduct \$200.00 per month from the deposit to make up the extra. The Tenant then explained that he had received information from the Branch that the Landlord could not increase the rent beyond the 3.2% allowed in the regulation.

The Tenants then informed the Landlord they would not be paying any extra rent beyond 3.2%.

The prior landlord testified that the Landlord had discussed with her how to write short term leases. The prior landlord suggested to the Landlord that he join an association which gives advice to landlords.

The Landlord testified he had joined such an organization. The Landlord testified he tried to negotiate a short term agreement with the Tenants and then the next day the Tenants disagreed with the amount of rent the Landlord wanted.

The Tenant submitted there was an oral agreement or contract between the Landlord and the Tenants for three months. He wanted the Landlord to be held to the terms of this oral contract.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants have breached the Act and the Tenancy Agreement by not vacating the rental unit when they were required to do so. I find the Tenants are overholding past the end of the tenancy and that the Landlord is entitled to an order of possession and to monetary compensation for unpaid rent from the Tenants.

The different ways a tenancy ends are described in Part 4, division 1 of the Act. Under section 44(1)(b) of the Act a tenancy ends if, "... the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy." No further notice to end the tenancy is required from either party under the Act to end this type of tenancy.

In this instance, the Tenancy Agreement was such a fixed term agreement, and the Tenants had agreed to vacate the rental unit at the end of the term. I find the tenancy ended on July 31, 2010, in accordance with the Tenancy Agreement and the Act.

Prior to the end of the Tenancy Agreement the parties were free to enter into another tenancy agreement. The Landlord had the right to request a higher rent under a new tenancy agreement and the Tenants could choose to pay the increased rent, negotiate a different rate of rent which was acceptable to the Landlord, or vacate the rental unit.

As explained to the Tenant during the course of the hearing, I have no knowledge of what conversation(s) the Tenants may have had with the Branch or more importantly, what information the Tenants provided to the Information Officer(s) responding to their questions. It is true that in a month to month tenancy the limit for rental increases is set out in the Act and regulation. However, as the parties here were negotiating a new tenancy agreement, the Landlord did not have to adhere to the regulation limiting an increase of rent to 3.2% for 2010, for the new agreement.

I further find there was no binding oral contract between the parties to extend the Tenancy Agreement or to form a new tenancy agreement. By his own testimony the Tenant admitted he refused to pay the Landlord the rate of rent the Landlord wanted under the new tenancy agreement.

The basics of a contract, whether oral or in writing, require the elements of offer, acceptance and consideration. Here the parties may have exchanged offers to form a new contract or extend the Tenancy Agreement, however, I find there is no evidence of acceptance here. Furthermore, it is clear there was no consideration exchanged, and therefore, no new tenancy was created and the Tenancy Agreement was not extended.

Having found the tenancy has ended and the Tenants are overholding, I grant the Landlord's request for an order of possession to be effective at **1:00 p.m. on August 22, 2010**. This order must be served on the Tenants, and may be registered and enforced through the Supreme Court of British Columbia.

I further grant the Landlord a monetary order in the amount of **\$1,079.03**, comprised of per diem rent of \$46.77 to August 22, 2010, and the \$50.00 filing fee for the Application.

I allow the Landlord to keep **\$1,079.03** from the security and pet deposits held of **\$1,450.00**.

The parties shall deal with the balance of **\$370.97**, in accordance with the Act, at the time the Tenants vacate the rental unit.

I dismiss the Landlord's claim for damage to the rental unit as it was premature, with leave to reapply.

Lastly, I note that following my oral decision at the end of the hearing, the appearing Tenant queried if I personally know the Landlord in this matter. He suggested I must know him and therefore, this is why I "sided" with him.

In effect, the Tenant has tried to impugn my integrity with this allegation of bias. For the record, I would have disqualified myself from the hearing if I had any self interest, bias or prejudice in this matter and, as I explained to the Tenant, I do not know the Landlord.

Following this, the male Tenant became rude and antagonistic. The Tenant appeared unable to accept the outcome of the hearing and repeatedly declared he was a teacher and knew his rights under the Act, and felt this was the wrong decision.

The Tenant is cautioned against repeating this type of inappropriate behaviour in any future legal proceedings he may be involved in.

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 19, 2010.

Dispute Resolution Officer