



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, & FF

Introduction

This hearing dealt with the landlord's claim for a monetary claim due to the tenant's breach of a fixed term tenancy. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

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.

Issues(s) to be Decided

Did the tenant breach the fixed term tenancy agreement entitling the landlord to monetary relief?

Background and Evidence

The parties entered into a fixed term tenancy on August 26, 2009 beginning a tenancy as of September 1, 2009 for the monthly rent of \$1,000.00. The tenant paid a security deposit of \$500.00 on August 10, 2009.

The written tenancy agreement indicates that the tenancy is for a fixed term ending on August 31, 2009 at which point the tenancy may continue on a month to month basis or for another fixed length of time. I note that the date August 21, 2009 is a mistake since the tenancy did not begin until September 1, 2009.

There was disputed oral testimony about whether the landlord and the tenant verbally agreed to allow the tenancy to end earlier than the fixed period. The tenant understood that he would be able to give 30 days notice at anytime to end the tenancy and he submits that the landlord agreed to this situation. It was also the tenant's position that the incorrect end date documented in the tenancy agreement rendered the contract

void. The tenant gave notice to end the tenancy on March 30, 2010 for the end of April 2010.

The landlord submits that the tenant broke a fixed term lease and is responsible for the landlord's loss to the end of the fixed term tenancy. The landlord provided evidence that he mitigated his loss as best as possible by advertizing the rental unit immediately; however, because of the time of year it was difficult to re-rent the unit. The landlord stated that he informed the tenant he would attempt to rent the suite and if that was successful then there would be no further obligation. Unfortunately, the landlord was not successful and experienced a loss.

The landlord seeks compensation for advertizing costs of \$109.10, loss of one month's rent for May 2010 for the sum of \$1,000.00 and \$225.00 representing a loss of rental revenue of \$75.00 for June, July and August 2010 because the landlord rented the unit at rent below the rent agreed to in this tenancy agreement.

Analysis

I find that the tenant is bound to the fixed term tenancy agreement which he signed on August 26, 2009. By signing this agreement the tenant entered into a fixed term tenancy and remained responsible for any loss experienced by the landlord to the end of the agreed fix term. I do not accept the tenant's argument that the fixed term tenancy cannot be enforced because of the incorrect end date. I accept that the parties incorrectly put in the date of August 31, 2009 when the intent was clearly August 31, 2010.

Although I acknowledge that the tenant is a young man, the *Act* does not exclude the tenant's obligations due to inexperience or youth. While the tenant disputes the written contract based on his interpretation of oral discussions, I find that I cannot deviate from the written contract in favour of disputed oral testimony. Although I acknowledge the tenant's position that he was not intending to rent for a fixed term because he was a student, by signing the tenancy agreement the tenant committed to renting the unit until August 31, 2010. I accept that the landlord declined the tenant's request to rent the unit for less than one year and that the tenant proceeded to sign the tenancy agreement despite his concerns he may not be able to fulfill the contract. The tenant is responsible for making this decision and the tenant had the option of not entering into the contract in the first place.

I also do not accept the tenant's claim that the addendum to the tenancy agreement reverted the tenancy to a month to month contract because it contains a clause stating

that the tenant must give 30 full days notice to end the tenancy. This clause in the addendum is consistent with section 45 of the *Act* which requires that a tenant end a tenancy with 30 days notice in writing, whether in a fixed term or month to month tenancy. Section 45 of the *Act* confirms that despite the tenant's notice he remains obligated to potential loss experienced by the landlord to the end of the fix term.

I accept that the landlord made reasonable efforts to rent the unit and to minimize the loss due to the tenant's breach of the fix term tenancy. I accept that the landlord experienced a loss of one month's rent for \$1,000.00, advertizing cost of \$109.10 and a loss of \$75.00 per month in the monthly rent for June, July and August 2010. The total claim established by the landlord, including recovery of the \$50.00 filing fee paid for this application is **\$1,409.10**.

From this sum I Order that the landlord may retain the tenant's security deposit of \$500.00 in partial satisfaction of this claim and grant the landlord a monetary Order for the remaining balance of **\$909.10**.

Conclusion

The landlord's application seeking monetary relief due to the breach of the fixed term tenancy by the tenant is granted. I have issued the landlord a monetary Order for the sum of **\$909.10**. This Order may be 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: October 29, 2010.

Dispute Resolution Officer