



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; for a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The parties were not permitted to discuss issues that were not relevant to the Landlord's claims for compensation.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent, for loss of revenue, for cleaning the rental unit, for the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2006 and that it ended on September 26, 2008 or September 27, 2008. The parties agree that the Tenants were required to pay monthly rent of \$700.00 on the first day of each month.

The Landlord and the Tenant agree that this tenancy ended after the Landlord served the Tenant with a One Month Notice to End Tenancy. The female Tenant stated that the Notice to End Tenancy was served to her sometime during the first week in September. The Landlord with the initials "L.W." stated that the Notice to End Tenancy was served to the Tenant on September 05, 2008.

The Landlord with the initials "L.W." stated that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 31, 2010. The female Tenant stated that she does not know the declared effective date of the Notice to End Tenancy as she

did not read the entire document. She stated that she believed she had to vacate the rental unit within thirty days of receiving the Notice to End Tenancy. A copy of the Notice to End Tenancy was not submitted in evidence.

The Landlord is seeking compensation, in the amount of \$100.00, for unpaid rent from August of 2008. The female Tenant agreed that she owes \$100.00 in rent from this month.

The Landlord is seeking compensation, in the amount of \$700.00, for unpaid rent from September of 2008. The female Tenant agreed that she owes \$700.00 in rent from this month.

The Landlord is seeking compensation, in the amount of \$700.00, for loss of revenue for October of 2008. The female Tenant does not feel she should have to pay rent for October as she did not occupy the rental unit during October.

The Landlord stated he was not aware that the Tenant would be vacating prior to October 31, 2008; that he did not advertise the rental unit for rent for October 01, 2008 because he was not aware that it would be vacant on that date; that he did advertise the rental unit after it was vacated; and that he found a new tenant for November 01, 2008.

The Landlord is claiming \$120.00 for the cost of cleaning the rental unit at the end of the tenancy. The female Tenant agreed that a significant amount of property was left in the rental unit and she agreed to compensate the Landlord, in the amount of \$120.00, to dispose of that property.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$700.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

I find that the Tenants failed to pay \$100.00 in rent that was due on August 01, 2008 and \$700.00 in rent that was due on September 01, 2008. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$800.00 in outstanding rent to the Landlord.

In the absence of evidence to the contrary, I accept that the One Month Notice to End Tenancy, served pursuant to section 47 of the *Act*, that was served to the Tenant in September of 2008 declared that the Tenant must vacate the rental unit by October 31, 2008. In reaching this conclusion I was heavily influenced by the Landlord's testimony that the Notice declared that the Tenant must vacate the rental unit by October 31, 2008 and by the Tenant's testimony that she does not know the declared effective date of the Notice.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant acknowledged that this Notice was received in September of 2008 and rent is due on the first of each month, the earliest effective date of a Notice served in September of 2008 would have been October 31, 2008.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Even if the Notice to End Tenancy stipulated that this tenancy would end on a date prior to October 31, 2008, I find that the effective date of this Notice to End Tenancy would have been October 31, 2008.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. I find that the Tenant did not serve the Landlord with Notice to End this tenancy in September of 2008. I find that the Landlord attempted to end this tenancy on October 31, 2008 when he served the Tenant with a Notice to End Tenancy, pursuant to section 47 of the *Act*.

Section 44(1)(b) of the *Act* stipulates that 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. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant abandoned the rental unit in September of 2008.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that the Tenant vacated the rental unit on a date that is earlier than the date on the Notice to End Tenancy.

I find that the Tenant's action significantly impaired the Landlord's ability to find new tenants for October 01, 2008, as the Landlord did not have a reasonable opportunity to advertise the unit. I find that the Landlord is therefore entitled to compensation for loss of revenue from October of 2008, in the amount of \$700.00.

As the Tenant agreed to pay the Landlord \$120.00 for removing property left behind at the end of the tenancy, I find that the Landlord is entitled to this amount.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,670.00.00, which is comprised of \$800.00 in unpaid rent; \$700.00 in loss of revenue; \$120.00 for disposing of personal property; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,670.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: November 26, 2010.

Dispute Resolution Officer