



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the request for an Order of Possession.

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 Landlord was advised that with the exception of the Landlord's claim for cleaning, the Landlord's compensation for damage to the rental unit was being refused, pursuant to section 59(5)(a) of the *Act*, because the Application for Dispute Resolution did not provide sufficient particulars of the Landlord's claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for damages to the rental unit.

The Landlord and the Tenant were advised that the Landlord's claim for compensation for cleaning was going to be considered at this hearing, as the Landlord clearly specified on the Application for Dispute Resolution that compensation for cleaning was being sought and the Landlord submitted a receipt for cleaning, in the amount of \$90.00. I find that this information provided the Tenant with reasonable notice of the Landlord's intent to seek compensation of \$90.00 for cleaning.

Conversely, the Landlord does not provide sufficient details of why the Landlord is claiming an additional \$1,310.00 in damages. The only information submitted by the Landlord in regards to damages is a series of emails between the Landlord and the



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Tenant regarding damage to the rental unit and an estimate of \$798.00 to repair damages. I do not find that these emails serve as sufficient notice of the nature of the Landlord's claims, as a Tenant should not have to sort through emails in an attempt to ascertain the extent of the Landlord's claims.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, for loss of revenue, and the cost of cleaning the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2009; that the Tenant was required to pay monthly rent of \$600.00 on the first day of each month; and that the Tenant paid a security deposit of \$300.00.

The Landlord and the Tenant agree that a Condition Inspection Report was initiated on July 01, 2009 and was completed on December 28, 2010.

The Agent for the Landlord and the Tenant agree that on, or about November 13, 2010 the Tenant verbally advised the Landlord that he would be seeking alternate accommodation.

The Tenant contends that during this conversation he told the Agent for the Landlord that he would be vacating the rental unit at the end of November due to a large amount of mould that was found in the bedroom. The Tenant submitted no evidence to corroborate his statement that there was a large amount of mould in the bedroom.

The Agent for the Landlord contends that during this conversation the Tenant did not tell him when he would be moving out; that the Tenant told him he wished to move so he would be closer to work; that the Tenant did mention a problem with mould during this conversation, although he did not cite this as the reason for moving; and that when he viewed the rental unit at the end of the tenancy he did not observe mould in the rental unit.

The Tenant contends that he moved out of the rental unit on November 29, 2010. He stated that he returned to the rental unit on December 05, 2010 or December 06, 2010, at which time he located a Ten Day Notice to End Tenancy on the door of the rental unit; that he left a telephone message for the Agent for the Landlord on that date

advising him that he had vacated; that he spoke with the Agent for the Landlord on December 16, 2010 and advised him that he had vacated the rental unit; that he returned to the rental unit on December 21, 2010 and determined that the locks to the rental unit had been changed; that he returned the keys to the Agent of the Landlord on December 26, 2010; and that he completed a Condition Inspection Report on December 26, 2010, although he agrees that the keys may have been returned and the Condition Inspection Report may have been completed on December 28, 2010.

The Agent for the Landlord stated that he does not know when the Tenant actually vacated the rental unit; that he posted a Notice to End Tenancy at the rental unit on December 05, 2010; that he did not enter the rental unit on December 05, 2010 but from what he was able to see from looking into the rental unit a lot of property had been removed but some personal property remained; that he did receive a phone message from the Tenant shortly after he posted the Notice to End Tenancy but he was unable to contact him by telephone until December 16, 2010, at which time the Tenant advised him that he had moved out of the rental unit; that the locks to the rental unit were changed on December 21, 2010; that the keys were returned on December 28, 2010; and that he completed a Condition Inspection Report on December 28, 2010.

The Landlord and the Tenant agree that the Tenant did not pay rent for December of 2010, for which the Landlord is seeking compensation of \$600.00. The Landlord is also seeking compensation, in the amount of \$600.00 for loss of revenue from January of 2011. The Landlord contends that it had insufficient time to repair and advertise the rental unit for January 01, 2011, as they did not know the Tenant had vacated the rental unit until December 16, 2010.

The Landlord is seeking compensation, in the amount of \$90.00, for cleaning the rental unit. The Tenant agrees the rental unit needed some cleaning at the end of the tenancy and he does not dispute that the Landlord is entitled to \$90.00 for cleaning the rental unit.

Analysis

Based on the undisputed evidence, I find that this tenancy began on July 01, 2009; that the Tenant was required to pay monthly rent of \$600.00 on the first day of each month; that the Tenant paid a security deposit of \$300.00.

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord when rent is due. I find that rent for this tenancy is due on the first day of each month until such time as the tenancy was ended in accordance with the *Act*.

Section 44(1)(a) of the *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*. The evidence shows that neither party gave proper written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) 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 *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the rental unit. While I accept that this tenancy ended pursuant to section 44(1)(d) of the *Act*, I am unable to determine that exact date that the tenancy ended, as the Tenant and the Landlord cannot agree on the date that the Tenant returned her keys to the Landlord.

I find the Tenant's testimony that he vacated the rental unit on November 29, 2010 lacks credibility, as he acknowledged returning to the rental unit on December 05, 2010 or December 06, 2010, at which time he found the Notice to End Tenancy attached to the front door, and again on December 21, 2010, at which time he found the locks to the rental unit had been changed. This causes me to conclude that the Tenant was accessing the rental unit after December 01, 2010.

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*. In reaching this conclusion I find that the Tenant submitted insufficient evidence to show that there was mould in this rental unit and that the mould in the unit rendered the unit unsuitable for habitation.

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 he failed to provide the Landlord with written notice of his 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. As the Tenant had not properly ended the tenancy prior to December 01, 2010, I find that he was obligated to pay all of the rent that was due on

December 01, 2010, pursuant to section 26 of the Act. On this basis, I find that the Tenant must pay the Landlord rent for December of 2010, in the amount of \$600.00.

I find that the Tenant did not provide the Landlord with reasonable notice that the rental unit had been vacated. Although the Tenant stated that on December 05, 2010 or December 06, 2010 he left a message for the Agent for the Landlord in which he advised that the rental unit had been vacated, the Agent for the Landlord denies receiving that information in the message left by the Tenant. In reaching this decision, I was influenced by the undisputed evidence that shows the locks were changed on December 21, 2010. In my view, it is highly unlikely that the Landlord would have waited so long to change the locks if it had been advised the rental unit had been vacated on December 05, 2010 or December 06, 2010.

The undisputed evidence is that on December 16, 2010 the Tenant advised the Agent for the Landlord that he had vacated the rental unit until December 16, 2010. I accept the Agent for the Landlord's testimony that this is the first time the Landlord was advised that the rental unit had been vacated, as this testimony is more consistent with the fact that the locks were changed on December 21, 2010.

I find that the Tenant's failure to provide written notice of his intent to vacate the rental unit by December 01, 2010 and his delay in informing the Landlord that he had vacated the rental unit jointly prevented the Landlord from taking possession of the rental unit and advertising it in a manner that gave the Landlord a reasonable opportunity to find new tenants for January 01, 2011. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the Act, pursuant to section 67 of the Act, which in these circumstances is \$600.00 in rent that the Landlord may have collected in January.

As the Tenant agreed that the Landlord is entitled to compensation of \$90.00 for cleaning the rental unit, I award the Landlord \$90.00 for cleaning costs.

I find that the Landlord's application has merit and 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 \$1,340.00, which is comprised of \$600.00 in unpaid rent, \$600.00 in compensation for loss of revenue, \$90.00 for cleaning, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Act, I authorize the Landlord to retaining the Tenant's security deposit of \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,040.00. 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: January 14, 2011.

Residential Tenancy Branch