



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNR, OPB, OPC, OPR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent, an Order of possession and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord withdrew his request for an Order of possession; the tenants have vacated the rental unit.

The landlord's Application included a request for a monetary Order for unpaid rent; I have amended the Application to reflect a claim for loss of rent revenue, as set out in the details of the dispute portion of the Application. The details of the dispute also indicated a claim was being made against the deposit; during the hearing the tenants testified that they had previously agreed the landlord would retain the deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to compensation for damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- This was a fixed-term tenancy that commenced July 1, 2010;
- The term of the tenancy ended on June 30, 2012;
- Rent was \$2,300.00 per month due on the first day of the month;
- A deposit in the sum of \$1,150.00 was paid at the start of the tenancy;
- The tenants paid hydro costs;
- That they met in mid-July to discuss the tenant's dissatisfaction with the tenancy and a possible end of the tenancy; and
- The tenants vacated the rental unit on August 1, 2010.

The landlord is claiming:

- \$2,300.00 loss of rent revenue for August, 2010;
- \$2,300.00 due to a failure to give notice ending the tenancy;
- \$80.00 hydro costs; and
- \$100.00 for door re-keying.

The tenants submitted that the landlord agreed they could vacate the unit at the end of July; the landlord denied there was any agreement, but only an understanding that the tenants wanted to terminate the tenancy. The landlord did not know that the tenants planned on vacating the unit on August 1, 2010.

The landlord commenced advertising the unit, in an attempt to mitigate any potential loss; new occupants were located for September, 2010. The landlord is seeking compensation for August 2010, rent.

The tenants supplied a letter written by an individual in which he stated he had a clear view of the rental unit from his home and that during the first week of August, 2010, he witnessed a male and female move into the suite; that they continued to reside in the unit and that they had a cat. An attempt to reach this witness, so that the dispute resolution officer and landlord could question him was unsuccessful.

The tenants stated that the landlord had tenants for August; the landlord stated that workers were present and someone may have spent a few nights in the unit; but that the landlord did not receive any rental income for August, 2010.

The parties could not agree on the amount of hydro owed; the landlord thought it was approximately \$80.00 for July and August, 2010; copies of hydro bills were not supplied to the tenants or the Residential Tenancy Branch prior to the hearing. The tenant submitted copies of hydro bills which showed they had paid July hydro in full. No agreement was reached in relation to August hydro.

The landlord re-keyed the unit, but did receive the keys from the tenants on either August 6 or 7; no verification of the re-keying cost was submitted as evidence.

The amount claimed for failure to give proper notice is equivalent to one month's rent; the landlord confirmed that the tenancy agreement did not contain a liquidated damages

clause. Both parties had a copy of the tenancy agreement; the landlord, on my request, submitted a copy to the Residential Tenancy Branch at the conclusion of the hearing.

Analysis

Section 45(2) of the Act provides:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement end.

I note that the tenancy agreement signed by the parties included a clause, (14(5),) which allowed the parties to agree, in writing, to an end of the tenancy; this did not occur. Therefore; I find, in the absence of any written mutual agreement ending the fixed-term tenancy; that the tenants breached section 45(2) of the Act when they vacated the rental unit on August 1, 2010.

I find that the tenancy ended on August 1, 2010.

In the absence of any evidence that the people witnessed at the rental unit were occupants who were paying rent to the landlord, and, on the balance of probabilities, I find that the landlord did not receive rent for August, 2010, and that the landlord is entitled to compensation for loss of rent revenue in the sum of \$2,300.00.

I dismiss the claim for additional compensation in the sum of 1 month's rent. Payment of this amount was not included in the tenancy agreement as liquidated damages and, even if it had been I would likely find that this sum was a penalty.

The landlord did not supply copies of the hydro bills to the tenants, verifying the amount of hydro owed. The tenants did supply copies of bills that indicated payment in full for July, 2010. In the absence of evidence of hydro arrears for July and August, 2010; I dismiss the landlord's claim for hydro costs. I have not considered the late hydro bill evidence submitted by the landlord, as that evidence was not served to the tenants prior to the hearing.

The landlord did not provide evidence that the unit was re-keyed due to the actions of the tenants, nor did the landlord provide verification of the amount claimed for re-keying; therefore, I find that the claim for key costs is dismissed.

I find that the landlord will retain the deposit, in partial satisfaction of the claim; as previously agreed to by the tenants.

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

Conclusion

I find that the landlord established a monetary claim, in the amount of \$2,350.00, which is comprised of \$2,300.00 in the loss of August, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposit in the sum of \$1,150.00 in partial satisfaction of the claim for compensation.

Based on these determinations I grant the landlord a monetary Order for **\$1,200.00**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's monetary claim is dismissed.

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: February 01, 2011.

Residential Tenancy Branch