



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representative and the tenant participated in the hearing. The tenant's proposed witness, T.B. attended at the outset of the hearing, but she was asked to leave the hearing until called upon to testify. I decided that the testimony of the proposed witness would not be helpful and did not hear her evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and if so in hat amount?

Background and Evidence

The rental property is a house in Kelowna. The tenancy began February 1, 2010 for a fixed term with rent in the amount of \$2,150.00 payable on the first of each month. The tenant paid a security deposit of \$1,075.00 on January 14, 2010.

The landlord's representative testified that the tenant's partner, also an occupant of the rental unit told him that they were having financial difficulties and were unable to pay the rent. According to the landlord's representative it was mutually agreed, although not in writing, that the tenants would move out by August 15th. The tenants did not move out and the tenant demanded that the landlord give her a written notice ending her tenancy before she would move out. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on August 23, 2010. He said that the tenant moved out in early September and a condition inspection was conducted on September 9, 2010.

The landlord's representative testified that he secured a new tenant and the new tenancy commenced on September 15, 2010. The new tenant was T.B., the tenant's intended witness in this application. The landlord said that there was a highly

acrimonious dispute between the landlord and the new tenant T.B. The tenant submitted documents relating to the dispute between the landlord and T.B. that were not relevant to this dispute, but in her communications to the tenant concerning the landlord, T.B. expressed her profound hostility towards the landlord's representative.

The tenant testified that the landlord agreed to "let her out of the lease". She said the landlord's representative said that she would not be responsible for August rent. She said that the new tenant moved into the rental property on September 7, 2010; she said that some of the new tenant's belongings were stored at the rental property when the condition inspection was conducted on September 9, 2010. The tenant claimed that T.B. would testify that the landlord agreed that the tenants would not be responsible for paying rent for the month of August.

The documents submitted by the tenant included e-mail messages to the landlord confirming the tenant's intention to move out of the rental unit on the weekend of August 21-22nd, 2010 due to the inability to pay the rent.

The landlord's representative testified that he allowed the new tenants to store some items in the garage on the rental property beginning on September 7, 2010, but the tenants did not take possession of the property, did not move in and did not commence paying rent until September 15, 2010.

Analysis and Conclusion

The landlord's testimony and the documents submitted by the tenant establish that the tenant failed to pay rent for the month of August, 2010 and told the landlord she and her partner would move out by August 22nd at the latest. The landlord denied any agreement to relieve the tenant from her obligation to pay rent for the month of August and the tenant did not provide any cogent explanation as to why the landlord would have either proposed or agreed to such an arrangement. Given the acrimony between the intended witness T.B. and the landlord and given that the tenant's documents show that T.B. first contacted her in December, 2010 and therefore could have no direct knowledge of any discussions between the landlord and the tenant in August, I determined that the testimony of T.B. was valueless and prejudicial and I therefore declined to hear her testimony. The tenant moved out in early September after receiving a 10 day Notice to End Tenancy for unpaid rent. I find that the landlord acted to mitigate its damages by securing a new tenant commencing September 15, 2010. I accept the landlord's testimony that the new tenancy did not begin until September 15, 2010 and no rent was paid for any period prior to September 15, 2010, although the new tenant was permitted to move items to the rental property before that date. I find

that the landlord is entitled to recover the unpaid rent for the month of August in the amount of \$2,150.00 and is entitled to an award for loss of revenue for the first two weeks of September in the amount of \$1,075.00. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$3,275.00. I order that the landlord retain the security deposit and interest in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$2,200.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: January 24, 2011.
