



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing her Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of her security deposit; and to recover the fee for filing her 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.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for lost revenue resulting from this tenancy ending without proper notice; whether the Landlord is entitled to compensation for a lost mail box key; whether the Landlord is entitled to compensation for costs associated to serving evidence; whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; and whether the Landlord is entitled to recover the filing fee for the cost of her Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to recover some of the rent she paid for November of 2010; whether the Tenant is entitled to the return of her security deposit; and whether the Tenant is entitled to recover the filing fee for the cost of her Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement, a copy of which was submitted in evidence. The tenancy agreement indicates that the tenancy began on August 01, 2010 and that the Tenant is required to pay monthly rent of \$540.00 by the first day of each month. The tenancy agreement indicates that this is a fixed term tenancy that will end on October 30, 2010. Both parties have initialled the section which declares that the Tenant must vacate the rental unit at the end of this tenancy.

The Tenant stated that she did not realize the tenancy agreement indicated that the tenancy would end on October 30, 2010, in spite of the fact that she initialled beside that term of the agreement. The Landlord stated that she believed the tenancy would continue on a month to month basis at the end of the tenancy unless it was determined there was a problem with the tenancy.

The Landlord and the Tenant agree that the Tenant paid rent on November 01, 2010, at which time she verbally advised the Landlord she would be vacating the rental unit at the end of that month. The parties agree that the Landlord advised the Tenant that she could not end the tenancy at the end of November and that she was obligated to provide the Landlord with one month's written notice of her intent to end the tenancy.

An attachment to the tenancy agreement indicates that a \$100.00 fee will be levied if the Tenant gives "late notice to vacate". The Landlord is attempting to collect this fee as the Tenant did not provide her with written notice of her intent to vacate at the end of November until November 09, 2010.

The Landlord and the Tenant agree that the on November 11, 2010, the Landlord advised the Tenant that she had an individual who was interested in moving into the rental unit on November 15, 2010 and she asked if the Tenant would be able to move out that quickly. The parties agree that on November 12, 2010 the Tenant advised the Landlord that she will vacate the rental unit by November 13, 2010, and that the Tenant did vacate the rental unit by that date.

The Landlord and the Tenant agree that the Tenant lost a mail box key during this tenancy. The Landlord submitted a copy of a Condition Inspection Report that was signed by the Tenant on November 13, 2010, in which the Tenant authorized the Landlord to retain \$10.00 from her security deposit in compensation for the lost key. The Tenant does not dispute that she agreed to pay the Landlord \$10.00 for the lost key.

The Landlord is seeking compensation for mailing costs she incurred in relation to serving the Tenant with documents related to these proceedings.

In the Condition Inspection Report that was signed by the Tenant on November 13, 2010, the Tenant agreed to allow the Landlord to retain the security deposit of \$270.00. The Report indicates that the Tenant owes \$540.00 in unpaid rent/late fees and \$10.00 for a key replacement; that the Landlord would be retaining the security deposit of \$270.00; and that the Tenant still owes the Landlord \$540.00.

The Landlord stated that she miscalculated the Condition Inspection Report, and that the Report should indicate that the Tenant owes the Landlord \$540.00 for rent that was due on December 01, 2010 and \$10.00 for the key replacement; that the Landlord will be retaining the security deposit of \$270.00 in partial compensation for the \$550.00 owed; and that the balance due to the Landlord is \$280.00.

The Tenant stated that she did not understand that she was allowing the Landlord to retain her entire security deposit when she signed the Condition Inspection Report.

Analysis

On the basis of the written tenancy agreement that was submitted in evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on August 01, 2010 and ended on October 30, 2010. The tenancy agreement clearly indicates that the Tenant must vacate the rental unit on October 30, 2010. Although both parties now appear to have either forgotten or misunderstood this term of the agreement, their initials beside this term causes me to conclude that this was a term that they discussed at the beginning of the tenancy and I find that they were both obligated to abide by the term of that agreement.

On the basis of the written tenancy agreement, I find that this tenancy ended on October 30, 2010, pursuant to section 44(1)(b) of the *Act*.

I find that the Landlord and the Tenant did not reinstate this tenancy when the rent was paid for November of 2010, as the parties did not agree on terms of a tenancy. The Tenant indicated a desire to pay rent for one month and the Landlord would not agree to those terms, which causes me to conclude that they did not enter into a new tenancy agreement after the end of their fixed term tenancy.

A tenant is not obligated to pay rent after a tenancy ends however if a tenant remains in possession of a rental unit, the tenant will be liable to pay rent on a per diem basis until the landlord recovers possession of the rental unit. In these circumstances the Landlord recovered possession of the rental unit on November 13, 2010 and I find that the Tenant is obligated to pay rent for the thirteen days she occupied the rental unit, which equates to \$234.00. As the Tenant paid \$540.00 in rent for November, I find that she is entitled to a rent refund of \$306.00.

I find that the Landlord is not entitled to a loss of revenue for the remaining portion of November of 2010 or for any portion of December of 2010. As this tenancy ended on October 30, 2010, the Landlord had an opportunity to attempt to enter into a new

tenancy agreement with this Tenant or she could have attempted to find a new tenant for November 01, 2010. I find that it was the Landlord's failure to take either of these actions that resulted in her loss of revenue for November and December of 2010 and that she is not, therefore, entitled to compensation from the Tenant for loss of revenue. Had the Tenant vacated the rental unit on October 30, 2010 without notice, which the tenancy agreement permitted, the Landlord would not have received any rent for November. On this basis, I dismiss the Landlord's application for compensation for loss of revenue.

As the tenancy agreement clearly establishes that this tenancy ended on October 30, 2010 and the Tenant was not required to give notice to end this tenancy, I dismiss the Landlord's claim for a \$100.00 fee for providing late notice.

On the basis of the Condition Inspection Report that was submitted in evidence, I find that the Tenant has given the Landlord permission to retain \$10.00 from her security deposit in compensation for a lost key. As the Landlord already has permission to retain this amount, I find that she is entitled to retain \$10.00 from the security deposit.

I find that parties are only entitled to recover costs for damages that are directly relate to breaches of the *Act* or the tenancy agreement, pursuant to section 67 of the *Act*. Costs that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the *Act*. As I do not have authority to award any other costs related to a dispute resolution proceeding, I dismiss the Landlord's claim to recover mailing costs.

Although the evidence shows that the Tenant provided the Landlord with written authorization to retain her entire security deposit, I find that the Landlord has only established that the Tenant owes her \$10.00. As the Landlord has not established that she has a legitimate claim for the remaining \$260.00 of the security deposit, I find that the Landlord must return \$260.00 of the security deposit to the Tenant.

As the Tenant gave the Landlord written authorization to retain the Tenant's security deposit, pursuant to section 38(4) of the *Act*, I find that the Landlord was not obligated to comply with section 38(1) of the *Act*. As the Landlord was not obligated to comply with section 38(1) of the *Act*, I find that she is not subject to the penalty outlined in section 38(6) of the *Act*. I therefore dismiss the Tenant's application for double the return of her security deposit.

I find that the Landlord's application has been without merit. Although she established a monetary claim of \$10.00, I find that she already had authorization to recover this amount from the security deposit and that she did not, therefore, need to file an Application for Dispute Resolution in order to recover this \$10.00. I therefore dismiss the Landlord's claim to recover the filing fee from the Tenant.

I find that the Tenant's Application for Dispute Resolution has merit and that she is therefore entitled to recover the cost of filing her Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$10.00, which is comprised of the \$10.00 the Tenant previously authorized her to retain in compensation for a lost key.

I find that the Tenant has established a monetary claim, in the amount of \$616.00, which is comprised of a rent refund of \$306.00, the return of \$260.00 of her security deposit, and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

After offsetting the two monetary claims, I find that the Landlord must pay \$606.00 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$606.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: February 09, 2011.
