Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNR, 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 unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. The Landlord is seeking a monetary Order in the amount of $950.00 in unpaid rent for August of 2010.

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 and for the return of the security deposit. The Tenant is seeking a monetary Order in the amount of $4,900.00.

It is relatively clear from the information on the Application for Dispute Resolution that the Tenant is seeking the return of her security deposit and compensation for the deposit not being returned within fifteen days of providing the Landlord with a forwarding address, which is $950.00. As the claim for $950.00 was clearly outlined in the Application for Dispute Resolution, that claim will be determined at this hearing.

I find that the Tenant has not clearly outlined the nature of the remainder of the $4,900.00 claim. Although at the hearing the Advocate for the Tenant stated that the Tenant is claiming compensation of $475.00 for rent that was paid for August of 2011 and for the damages related to being locked out of her rental unit prior to August 01, 2011, I find that this claim was not adequately explained in the Application for Dispute Resolution. I therefore refuse to accept this portion of the Tenants' Application for Dispute Resolution, pursuant to section 59(5)(c) of the *Act*, as it the Application does not include full particulars of this aspect of her dispute. The Tenant retains the right to file another Application for Dispute Resolution for these specific issues.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenants' evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent, whether the Landlord is entitled to retain all or part of the security deposit, whether the Tenant is entitled to the return of double her security deposit, and whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 16, 2010, that the Tenants were obligated to pay monthly rent of $950.00 on the first day of each month, and that the Tenants paid a security deposit of $475.00.

The Landlord and the Tenant agree that rent was paid for July of 2010. The Tenant stated that she left for holidays on, or about, July 15, 2010 and that when she returned near the end of July she found the rental unit insecure and that all of her personal property had been removed from the rental unit. She stated that she spoke with the resident manager upon her return home who advised her that her property had been moved into storage and that he would not return it until rent was paid for August of 2010. She stated that she does not know what happened to her co-tenant's property.

The Agent for the Landlord stated that he was not employed by the Landlord in July or August of 2010. He stated that the person who was the resident manager of the building in July and August of 2010 no longer works for the Landlord but the Agent for the Landlord has spoken with him about this matter. He stated that the former resident manager advised him that rent for July was paid directly to the Landlord by the Provincial Government, that rent had not been received for August of 2010; that he met with both Tenants in early August of 2010; that the Tenants advised him that they could not pay the rent for August of 2010; and that they gave him the keys for the rental unit due to their inability to pay the rent. The Agent for the Landlord stated that the former resident manager "did not mention" removing the Tenants' property from the rental unit but the Agent for the Landlord does not believe the resident manager would have seized the Tenants' property.

The Landlord is seeking compensation, in the amount of $950.00, for unpaid rent that the Landlord believes was due on August 01, 2010. The Tenant stated that she spoke with a representative of the Ministry of Social Services on April 18, 2011, who advised

her that her rent cheque for August of 2010 has been cashed. The Agent for the Landlord stated that the Landlord has no record of rent being paid for August of 2011.

The Tenant's legal advocate stated that she sent a letter to the Landlord on October 08, 2010 in which she provided the Landlord with a forwarding address for the Tenant. She stated that she sent the letter to the service address listed for the Landlord on the Application for Dispute Resolution, which is an address she obtained from the Ministry of Social Development and which was the address used by the Ministry to pay the rent.

The Agent for the Landlord stated that the service address listed for the Landlord on the Application for Dispute Resolution was correct when this tenancy began but that it changed on July 01, 2010. He stated that he believes the Tenants were verbally informed of the change of address at the beginning of July of 2010 by the former resident manager. The Tenant does not recall being advised of a new service address for the Landlord.

The Agent for the Landlord stated that he does not believe the Landlord received the letter that was mailed on October 08, 2010 until it was served to the Landlord in relation to this proceeding. He stated that on December 10, 2010 he received the Application for Dispute Resolution and associated documents, including the letter that was mailed on October 08, 2010, from the occupant who is now residing at the service address listed for the Landlord on the Application for Dispute Resolution. He stated that this occupant is not an agent for the Landlord.

Analysis

I find that this tenancy ended in the latter portion of July of 2010 after the resident manager removed the Tenant's property from the rental unit and after he refused to return her property to her. In reaching this conclusion I was heavily influenced by the Tenant's testimony and particularly by her statement that she returned the keys to the resident manager after she determined she could not live in the rental unit after he had seized her property. I find the Tenant's statement that her property had been moved to be more reliable than the hearsay evidence provided by the Agent for the Landlord, who could only repeat what the former resident manager told him. Without the benefit of being able to hear from the resident manager, in particular to hear whether or not he removed property from the rental unit, I find that the Landlord has submitted insufficient evidence to cause me to disregard the testimony of the Tenant.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a*

> *witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant to be more likely than the version of events provided by the Landlord. Given that the parties agree that rent was being paid directly to the Landlord by the Provincial Government, I find it difficult to accept that the Tenant would have willingly ended this tenancy because she could not pay the rent rather than attempting to determine why the Landlord had not received the rent for August that should have been paid by the Provincial Government.

I find that the Landlord breached section 26(3) of the *Act* when the Landlord seized personal property belonging to the Tenant and that this breach caused the Tenant to abandon the rental unit. As the Landlord's actions caused the Tenant to vacate this rental unit and resulted in this tenancy ending in the latter portion of July of 2010, I find that the Landlord is not entitled to rent for August of 2010. I therefore dismiss the Landlord's application for unpaid rent from August of 2010.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

I find that the Landlord received the Tenant's forwarding address on December 10, 2010 when the Agent for the Landlord received documents in relation to this proceeding from the occupant who is currently residing at the service address listed for the Landlord on the Application for Dispute Resolution. I based this conclusion on the Agent for the Landlord's acknowledgment that he received the forwarding address, in writing, on that date.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord received the Tenant's forwarding address when it was mailed, on October 08, 2010, to the service address listed for the Landlord on the Application for Dispute Resolution. Although I accept that a letter containing the forward address was mailed to the service address on that date, I also accept that this address was not being used as a service address for the Landlord in October of 2010. Given that the service address was obtained from the Provincial Government and that the Landlord had no obligation to provide the Provincial Government with an updated service address, I find that Tenant's forwarding address was mailed to a service address that was no longer being used by the Landlord.

In making a determination in this matter I gave no consideration to whether or not the Landlord provided the Tenant with an updated service address after this tenancy began. As the Tenant did not rely on her memory or her personal records to obtain a service address for the Landlord, I find that the Tenant would have relied on the information

provided by the Ministry of Social Development even if she had been provided with an updated service address during her tenancy.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. I find that the Landlord did comply with section 38(1) of the *Act,* as the Landlord filed an Application for Dispute Resolution on December 13, 2010, which is three days after the Landlord received the Tenant's forwarding address.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

As the Landlord has not established a monetary claim, I find that the Landlord is obligated to return the security deposit to the Tenant. Based on these determinations I grant the Tenants a monetary Order for the amount $475.00. 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: April 19, 2011.

Residential Tenancy Branch