Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application seeking compensation for loss of rent revenue; 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.

The tenant applied requesting return of double the deposit paid and to recover the filing fee.

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. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of February, 2011 rent revenue in the sum of $720.00?

May the landlord retain the deposit?

Is the tenant entitled to return of double the deposit paid?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 15, 2010; rent was due on the first day of each month in the sum of $720.00. A deposit of $350.00 was paid.

A copy of the tenancy agreement was submitted as evidence; it included a term that stated:

> *"This shall be a month-to-month tenancy which shall begin on October 15, 2010 (and in the case of a long-term tenancy end on January 31,st 2011."*

A copy of a "Notice to Landlord – Tenant's Notice on Security Deposit" was submitted as evidence. This document was issued by the tenant on February 1, 2011 and indicated that as a result of a verbal agreement made to extend the lease by one month, when it was to originally terminate on January 01, 2011. The notice provided the tenant's forwarding address and was sent to the landlord via registered mail on February 02, 2011. The tenant provided a copy of the Canada Post receipt and tracking number.

The landlord stated she did not receive the notice from Canada Post, informing her of the need to retrieve the mail and that it was not until the tenant called her on February 20 or 21 that she realized there was registered mail that contained the tenant's forwarding address. The landlord mentioned that her son lives in the upper unit of the rental building, where the mail was sent and that he did not receive the registered mail.

The landlord claimed against the deposit by submitting her application on February 28, 2011.

The tenant and landlord did not agree as to what, if any, discussion took place in relation to the end of the tenancy. The landlord stated she did not give the tenant permission to move out at the end of January, 2011 and that his late Notice caused her to lose rent revenue for February, 2011.

The tenant stated that when he was in the process of moving out on February 1, 2001 he spoke to the landlord's son, who had collected rent during the tenancy. The son did not indicate that there was any problem with the tenant leaving. The tenant stated that in early January the landlord was aware he would move; the landlord denied there was any agreement to end the tenancy.

Analysis

Section 6(3) of the Act provides:

> *(3) A term of a tenancy agreement is not enforceable if*
>
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

I have considered the term of the tenancy agreement which indicated that the tenancy was a month-to-month agreement and, at the same time, a term ending January 31, 2011. I find that the tenancy agreement signed by the parties lacked clarity as they are contradictory. Either a tenancy is a fixed term which converts to a month-to-month tenancy at the conclusion of the fixed term; or the tenancy ends with the tenant vacating at the end of the fixed term.

The tenancy agreement provided no clarity as to whether the tenant should move out on January 31, 2011, or if the tenancy would convert to a month-to-month agreement. The tenant submitted he did talk with the landlord in relation to an end of tenancy date; the landlord stated that the tenant understood that after January 31, 2011, the tenancy converted to a month-to-month agreement and that she had not received proper notice ending the tenancy.

The tenant's Notice issued on February 1, 2011, was also contradictory as it mentioned an extension of the original end date; January 01, 2011. The tenancy agreement had included a January 31, 2011, end date.

I find, based on the evidence before me and the balance of probabilities; that the tenant understood that notice ending the tenancy on or after January 31, 2011, was required. As the tenancy agreement did not require the tenant to vacate the unit by January 31, 2011, I find that the tenant had the right to possess the rental unit beyond that date, with the ability to then end the tenancy as provided by the Act as part of the rights under a month-to-month agreement.

When the parties disagree on verbal terms I turn to the written agreement, as the basis of the contract and although the agreement is confusing; it did not require the tenant to vacate.

Therefore, I find that the tenancy ended on January 31, 2011, when the tenant vacated and that proper notice ending the tenancy was not given in writing at least 1 month prior to the tenancy end date, as required by section 45 of the Act. Therefore, I find that the landlord is entitled to compensation for loss of February, 2011, rent in the sum of $720.00.

I find, based on the evidence before me and the balance or probabilities that the tenant provided the landlord with his forwarding address sent via registered mail on February 02, 2011. Registered mail is deemed served, as provided by section 90 of the Act, on the fifth day after mailing.

The landlord provided no evidence of any problems with the mail delivery to her service address or any information from Canada Post that supported her submission that registered mail notice was not given by the postal service. The tenant provided evidence of registered mail, which confirmed service to the landlord.

Therefore, pursuant to section 38(6) of the Act, which requires a landlord to pay double the deposit when the written forwarding address has been received and a claim not made within 15 days, I find that the tenant is entitled to double the $320.00 deposit paid.

As each application has merit I decline the filing fee costs to either party.

The landlord is entitled to compensation in the sum of $720.00; the tenant is entitled to double the $350.00 deposit; therefore, I have issued a monetary Order to the landlord for the balance owed; $20.00.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $720.00, which is comprised of loss of February, 2011, rent revenue.

The tenant is entitled to double the deposit paid in the sum of $700.00.

A monetary Order in the sum of $20.00 has been issued to the landlord for the balance owed. 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.

Neither party is entitled to filing fee costs

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: June 13, 2011.

Residential Tenancy Branch