



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order for rent for August 2010?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began September 1, 2009 and was set to switch to a month to month tenancy after August 31, 2010. Rent was payable on the first of each month in the amount of \$1,300.00. A move in inspection was completed August 31, 2009 and a move out inspection was completed July 25, 2010. The Tenants had vacated the property as of July 25, 2010.

The Landlord testified she is seeking compensation for August 2010 rent as the Tenants moved out before the end of the lease. She advised that she did re-rent the unit however it was for only a short term and she really wanted to enter into a lease. Upon further questioning about the dates of when the unit was re-rented the Landlord provided testimony that the person who occupied the rental unit was not really a tenant as they were only a friend of a friend.

The Landlord stated that she did not provide evidence to support her testimony of when the unit was occupied. She advised that she did not know the Tenants were moving out

as she was not provided notice from the Tenants. When she did find out she placed an advertisement on the internet and only showed the unit to one couple.

The Tenant testified and referred to her evidence which included a copy of the decision from their previous hearing from March 21, 2011. She pointed out it was determined in that decision that their notice to end the tenancy was provided June 30, 2010. They allowed the Landlord access to the unit at any time to show the unit and she knows for certain that the Landlord showed the unit twice while she was present and possibly more in her absence.

The Tenant stated that she is having a hard time believing the Landlord did not rent out the unit because the Landlord never mentioned it when they contacted her to request the security deposit, she never mentioned it during the previous hearing and she never made application for the August 2010 rent in her previous application for dispute resolution.

The Landlord stated she did not mention the fact that she had not rented out the unit to the Tenant because it was not the Tenant's business and she did not make application for the August rent in her previous application because she did not know she had to request it and she was waiting for all the bills to come in.

In closing the Tenant stated that it was her business if the unit was not re-rented and she pointed out the "trust" issue relating to the Landlord's testimony in the previous dispute resolution decision.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

I favor the evidence of the Tenant, who pointed out that the previous decision found notice to end tenancy was provided to the Landlord June 30, 2010, to which she stated the Landlord had shown the rental unit at least two times while they were present, and that this alleged issue of not re-renting the unit had never been brought up by the

Landlord in previous conversations or in the previous dispute resolution hearing. I favored the evidence of the Tenant over the Landlord, in part, because the Tenant's evidence was forthright and credible. The Tenant readily acknowledged that they broke their fixed term lease by ending their tenancy prior to the end of the lease. In my view the Tenant's willingness to admit fault when they could easily have stated they had entered into a verbal agreement with the Landlord to end the lease early lends credibility to all of their evidence.

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

I find the Landlord's explanation of why she did not make a previous effort to collect compensation for the loss of rent for August 2010 to be improbable; given that the Landlord had been showing the unit to prospective tenants prior to July 25, 2010, and the fact that she made no mention of losing rent for August 2010 in the previous application or hearing.

I find that the Landlord's explanation that she simply did not know she had to claim the loss of rent to be improbable when she had made an application for unpaid utilities which is in the same category (unpaid rent or utilities) on the application for dispute resolution. Rather, I find the Tenant's explanation that the trust of the Landlord's testimony is at question given that the Landlord claims to have shown the rental unit only once when the Tenant was present during at least two showings, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Landlord has provided insufficient evidence to meet the burden of proof to obtain a Monetary Order for August 2010 rent; therefore I dismiss the Landlord's claim, without leave to reapply.

The Landlord has not been successful with her application and therefore must bear the burden of the cost of her application.

Conclusion

I HEREBY DISMISS the Landlord's claim.

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: July 22, 2011.

Residential Tenancy Branch