



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss, for authority to serve documents or evidence in a different way than is required by the *Residential Tenancy Act*; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application to serve documents or evidence in a different way than is required by the *Residential Tenancy Act*.

The Landlord stated that he personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing at her place of employment on September 20, 2011. In the absence of evidence to the contrary, I accept that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent or loss of revenue from September and October of 2011 and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that on August 08, 2011 he entered into a verbal tenancy agreement with the Tenant that was to begin on September 01, 2011. He stated that on that date the Tenant gave him a cheque for a security deposit, in the amount of \$375.00, although the Tenant later placed a "stop payment" on this cheque; and that the parties agreed that the Tenant would pay rent of \$750.00 by the first day of each month.

The Landlord stated that on August 09, 2011 he gave the keys to the Tenant and he agreed that she could move personal property into the rental unit prior to the official start date of the tenancy. He stated that she did move some personal property into the rental unit.

The Landlord stated that on August 15, 2011 the Tenant told him that she no longer wished to rent the rental unit; that a few days later he noted that her personal property had been removed; that the keys have not yet been returned; and that he has never received written notice of her intent to end the tenancy.

The Landlord stated that the Tenant has paid no rent for this tenancy. He is seeking compensation for unpaid rent for September and loss of revenue for October, in the amount of \$1,500.00.

The Landlord stated that he began advertising the rental unit on, or about, August 16, 2011 and that he was able to find a new tenant for October 01, 2011, although there were problems with that new tenant. The Landlord argued that he is entitled to compensation for loss of revenue for October, as the Tenant did not provide proper written notice of her intent to vacate and she did not return the keys to the rental unit.

Analysis

On the basis of the undisputed evidence presented at the hearing and in the absence of evidence to the contrary, I find that the Landlord and the Tenant entered into a verbal tenancy agreement that was to begin on September 01, 2011, for which the Tenant was obligated to pay \$750.00 in rent by the first day of each month. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant tendered a cheque for the security deposit and that the Tenant was provided with keys to the rental unit.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that this tenancy ended when the Tenant abandoned the rental unit. In reaching this conclusion I was heavily influenced by the Landlord's testimony that on August 15, 2011 the Tenant told him she was not moving into the rental unit; that she had removed her personal belongings from the rental unit

within a few days of that date; and that she did not pay rent for September. Although I am unable to ascertain the exact date of the abandonment, I am satisfied that the rental unit was abandoned sometime prior to September 01, 2011.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant had not properly ended the tenancy prior to September 01, 2011, I find that she was obligated to pay all of the rent that was due on September 01, 2011, pursuant to section 26 of the *Act*, which was \$750.00.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if damage or loss results from a party not complying with the *Act*. Although I have found that the Tenant did not comply with section 45 of the *Act* when she ended the tenancy without proper written notice, I cannot conclude that this breach resulted in lost revenue for the Landlord for the month of October. I therefore dismiss the Landlord's claim for compensation for lost revenue for October of 2011.

In reaching this conclusion I was heavily influenced by the fact that the Landlord began advertising the rental unit in August of 2011 and that he was able to locate a new tenant for October 01, 2011, albeit there were subsequent problems with that tenancy. As he began to advertise the rental unit in August of 2011 I find that the lack of written notice provided by the tenant did not inhibit his ability to find a new tenant for October of 2011. In fact, the Landlord began advertising earlier than he would have been able to advertise had he been provide with written notice on August 31, 2011.

Residential Tenancy Branch records show that the Landlord did not pay a fee for filing his Application for Dispute Resolution. I therefore dismiss his application to recover this fee.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$750.00, as compensation for unpaid rent from September of 2011. Based on these determinations I grant the Landlord a monetary Order for the amount of \$750.00. 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.

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: November 23, 2011.

Residential Tenancy Branch