



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDS, FF

Introduction

This hearing was convened in response to joint applications filed by the landlord and the tenant. The landlord seeks:

1. An Order of Possession;
2. A monetary Order for unpaid rent; and
3. Recovery of the filing fee paid for this application.

The tenant seeks:

1. A monetary Order for recovery of double the security deposit; and
2. Recovery of the filing fee paid for this application.

Issue(s) to be Decided

Is either party proven they are entitled to the Orders sought?

Summary of Background and Evidence

This tenancy began on September 15, 2011 for a one year term ending September 30, 2011 after which time the tenancy would become a month-to-month tenancy. Rent was fixed at \$1,400.00 per month and the tenant paid a security deposit of \$700.00 on August 8, 2010.

Toward the end of the tenancy the landlord and tenant had email correspondence between them with respect to continuing the tenancy. The tenant submitted an email from the landlord dated August 9, 2011 stating in part:

...it is hard to be a distant landlord, and I am tired of it, so I decide to take the apartment back, my agent is going to talk to you about it, he will take the matter into his hand from now on.

(reproduced as written)

This discussion was followed up with a further email discussion between the tenant and the landlord's agent on August 31, 2011, in that discussion the tenant advised that she intended to remain in the rental unit until the end of December 2011. The agent replied enclosing a copy of the tenancy agreement stating that "...it ends up in a month..." (that is the end of September). The agent states that the landlord is not intending to seek renewal of the strata's permission, required on a yearly basis, to continue to rent the unit out. The agent also stated:

That means, when the strata's approval is over, your tenancy is over. I talked to Yi, he is going to end up renting this one and he has a new plan for it already. If you wish to stay, you could stay by paying the same rent until the end of the year; but, you will take the risk of being evacuated by strata any time after the renting approval ends. If you wish to move out by the end of Sep., please let me know.

The tenant says she considered the information she received and on September 27, 2011 she wrote to the landlord's agent to advise that she had reconsidered her position concerning vacating the rental unit, that she had found alternate accommodation and she intended to vacate the premises as of October 31, 2011. In that same letter the tenant asked that her security deposit be returned to her agent's office and she provided her agent's address for that purpose. The tenant also advised that she would be available to perform a move-out inspection with the landlord on October 28, 29, 30 or 31st anytime between 9 a.m. and 6 pm. The tenant testified that she delivered this letter in person to the landlord's agent at his real estate office in Richmond, BC. The tenant says she asked the receptionist for the agent personally but was told he was not in the office. The tenant then left the letter with the receptionist named Iris. The tenant testified that she had a witness with her and the witness attended the hearing.

The witness, AS, testified that he is a co-worker of the tenant and he went with her to the landlord's agent's office to deliver a letter. AS testified that the agent's office was a realty office in a small strip mall and that the tenant left the letter with a woman in the office who was appeared to be a receptionist. AS testified that he understood that the letter being delivered was the tenant's notice to end the tenancy.

The tenant testified that she vacated the rental unit on October 29, 2011 and dropped the keys off with Iris at the agent's real estate office on October 31, 2011. The tenant says a move-out inspection was never performed and she has, to date, not received the return of her security deposit and she is now seeking double her deposit as allowed under the Act.

The landlord says that neither he nor his agent received any written notice from the tenant and that they believed she was still living in the rental unit until the end of December 2011. The landlord tendered an email from the tenant to the landlord's agent dated August 31, 2011 stating:

I already have plans to move out by the end of the year, and I can't change that plan. So yes, I will remain there until the end of the year. Thank you.

The landlord and his agent say they did not receive the tenant's letter as described above and they never received the keys to the rental unit. The landlord's agent agrees that he has a receptionist named Iris but says she is very efficient and she would not forget to give him a letter or keys.

The landlord's agent testified that when the tenant did not pay rent for November 2011 he issued a 10 day Notice to End Tenancy. The agent says he knows the tenant was living in the rental unit after the end of October because he saw her there on November 10, 2011. The agent testified that on that date he went to the rental unit to serve the tenant with the 10 day Notice to End Tenancy. He rode up in the elevator with a woman and when she got off at the same floor as him the agent says he realized she was the tenant because she walked to the rental unit and went in. The landlord says he also had a good description of the tenant that the landlord had provided to him. The agent says he saw the tenant in the rental unit and she was with her daughter and he therefore did not wish to intrude. He then posted the notice to the rental unit door.

The tenant denies ever receiving a 10 day Notice to End Tenancy. No such notice was presented in evidence.

The landlord testified further that he has received complaints after October 2011 from his strata with respect to the tenant not ensuring the parking gate is shut behind her when she leaves. The landlord says he could produce the letter from the strata however he did not produce it for this hearing.

The tenant testified that while she no longer lives in the building she still goes to the building because her daughter is there. The tenant explained that her daughter is still going to school in the neighbourhood as she wished to remain in the same school until Christmas break. The tenant testified that her daughter goes back to the building after school and the tenant picks her daughter up at the building.

Analysis

Both parties have filed claims and both bear the burden of proving their claims. With respect to the landlord's claim he is seeking an Order of Possession, a monetary order for rent for November and December 2011 and recovery of his filing fee.

The tenant says she vacated the rental unit October 31, 2011, the landlord says this is not so, that the tenant remains in the rental unit and that he served a 10 day Notice to end Tenancy for unpaid rent for November 2011. The tenant denies receiving that Notice and the landlord did not produce the notice in evidence. In addition, while the landlord says he has proof the tenant remains in the building being complaint letters about her conduct received from the strata corporation he has not produced the complaint letter(s). Finally, the tenant has provided a reasonable explanation as to why she may be seen around the building. Based on these two rather crucial instances of a lack of documentary evidence to support testimony and the tenant's reasonable explanation as to why she may still be seen around the building after having vacated I find I prefer the evidence of the tenant. In addition to her documentary evidence which I accept, I found the evidence of the tenant and her eye witness to be consistent and clear, that is that the tenant and her witness delivered the tenant's notice to the landlord's agent's office leaving it with his receptionist who all agree is named Iris.

Preferring the evidence of the tenant I therefore dismiss the landlord's claim for an Order of Possession because I find that the tenant vacated the rental unit on or before October 31, 2011. I dismiss his claim for recovery of rent for November and December 2011 for the same reason. Finally, having found that the landlord did receive the tenant's notice letter dated September 27, 2011 as that letter contained the tenant's forwarding address I find that the landlord received the tenant's forwarding address.

Having received the forwarding address Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on August 8, 2010	\$700.00
Interest on original amount paid from date security deposit paid to date of this order	0.00
Filing Fees	50.00
TOTAL MONETARY AWARD	\$1450.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 3, 2012.

Residential Tenancy Branch