



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application made by the Landlord for a monetary order for unpaid rent, for loss or compensation arising from the Tenants breaking a fixed term lease early, to keep the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues(s) to be Decided

Did the Tenants breach the term lease, entitling the Landlord to the relief sought?

Background and Evidence

On or about July 13, 2011, the Tenants signed a tenancy agreement with a fixed term of one year, starting on August 1, 2011 and ending on July 31, 2012, and at the end of the initial fixed term, the tenancy was to continue on a month to month basis (the "Tenancy Agreement"). The Tenants paid a security deposit of \$525.00 and the monthly rent was \$1,050.00, payable on the first day of the month.

There was a liquidated damages clause in the Tenancy Agreement, although the amount of damages was not inserted into the Tenancy Agreement.

The Tenants gave the Landlord a notice they were ending the tenancy and left at the end of February 2012.

The Landlord argues that the Tenants did not have any authority under the Act to breach the fixed term lease and requests compensation for losses due to the breach. The Agent for the Landlord testified that the Landlord was unable to re-rent the unit until June 1, 2012, although the Landlord would be satisfied by simply keeping the security deposit and would abandon claims to any monetary amounts over the amount of the security deposit.

The father of the Tenant appeared at the hearing and submitted that the liquidated damages clause was not completed and therefore the lease was inconsistent, and the Tenants should not owe any money. The father of the Tenant argued that this was just a simple tenancy agreement which should not be binding on the Tenants.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants breached the Tenancy Agreement and the Act, without authority to do so, for the following reasons.

The Tenancy Agreement is a binding legal contract which both parties must abide by.

In British Columbia a tenancy may only end if done so in accordance with the Act.

Under section 45(3) of the Act the Tenants could not end the tenancy earlier than the fixed term date of July 1, 2012, unless there was some authority under the Act for them to do so. For example, if the Tenants felt the Landlord was in breach of a material term of the tenancy agreement, they could have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenants might have ended the tenancy by giving notice earlier than the end of the fixed term.

Here the Tenants had no authority under the Act to end the tenancy. Therefore, as the Tenants breached the Tenancy Agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenants have caused the Landlord to suffer a loss of at least one month of rent. For compensation I allow the Landlord to retain the security deposit in full satisfaction of the claims made, as the Landlord has abandoned any balance that exceeds the amount of the security deposit.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 25, 2012.

Residential Tenancy Branch