



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, OPR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord applied to amend the Application for Dispute Resolution to reflect the female Tenant's legal name, as it was provided by the Tenant at the hearing. The Application for Dispute Resolution was amended accordingly and the legal name is reflected in this decision and Order.

At the outset of the hearing the Agent for the Landlord confirmed the spelling of the Landlord's name.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement, a copy of which was submitted in evidence. The agreement indicates that the tenancy began on May 14, 2012 and that the fixed term of the tenancy ends on November 30, 2012; that the monthly rent is \$1,300.00; that the rent is due in advance on the last day of the month; and that the Tenant paid a security deposit of \$650.00.

The female Tenant stated that sometime in July of 2012 the Agent for the Landlord was verbally advised that the Tenants wished to end the tenancy and that the Agent for the Landlord agreed the tenancy could end before the fixed term of the tenancy. The Agent for the Landlord denies making this verbal agreement.

The Landlord and the Tenant agree that sometime in July of 2012 the Tenant provided the Landlord with written notice of their intent to vacate the rental unit by August 31, 2012. The Tenant contends that the Landlord accepted the written notice, which constitutes "implied consent for ending the tenancy". The Tenant submitted several letters that were left for them by the Landlord, which they contend show that the Landlord has consented to the end of the tenancy.

The Landlord and the Tenant agree that the Tenants attempted to have the Landlord sign a mutual agreement to end the tenancy and that the Landlord would not agree to sign it. The Tenant contends that during the latter part of August the Landlord harassed them by yelling and frequenting the rental unit without prior notice.

The Landlord and the Tenant agree that the Tenant typically paid rent in cash and that the Tenant did not pay rent for September of 2012. The Landlord and the Tenant agree that during the latter portion of the tenancy the Landlord would not meet with the Tenant unless she had a witness present.

The female Tenant stated that she phoned the Landlord on September 01, 2012 for the purposes of arranging to pay the rent; the Landlord did not answer the phone; and she did not leave a message. She stated that her only option was to go to the Agent for the Landlord's home to pay the rent and that she opted not to do so because the Agent for the Landlord had previously refused to meet with them without a witness.

The Agent for the Landlord stated that the male Tenant did come to her home on September 02, 2012 and informed her that he had received a Notice to End Tenancy, at which point he told her that he would pay the rent that evening.

The male Tenant denied telling the Landlord that he would be paying the rent. He stated that they did not pay the rent for September because they were accepting the Notice to End Tenancy. He stated that he did go to the Agent for the Landlord's home on September 03, 2012 to discuss a parking issue with the Agent for the Landlord.

The Agent for the Landlord stated that she slipped a Ten Day Notice to End tenancy for Unpaid Rent through the Tenant's door on September 02, 2012, a copy of which was submitted in evidence. The Notice declared that the Tenant must vacate by September 11, 2012. The female Tenant stated that this Notice was located on September 03, 2012. The parties agree that the Tenant vacated the rental unit on September 11, 2012.

The Agent for the Landlord stated that she has not yet found new tenants for the rental unit.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, which required the Tenant to pay monthly rent of \$1,300.00; and that the fixed term of the agreement was to end on November 30, 2012.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant provided the Landlord with written notice of their intent to vacate the rental unit by August 31, 2012. Section 45(2)(b) of the *Act*, stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the end date specified in the tenancy agreement. As the Tenant did not have the right to end the fixed term tenancy prior to November 30, 2012, I find that the written notice they provided the Landlord had no force or effect. I specifically note that the Tenant did not vacate the rental unit by August 31, 2012, in spite of the notice they served.

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 signed a mutual agreement to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

I find that the correspondence from the Agent for the Landlord to the Tenant, which was submitted in evidence by the Tenant, does not constitute a written agreement to end the tenancy. While it is clear from the letters dated August 03, 2012, August 23, 2012, August 29, 2012, September 05, 2012, and September 07, 2012 that the Agent for the Landlord was making attempts to find new tenants, I do not find that this indicates that the Landlord has mutually agreed to end the tenancy. In my mind, this correspondence simply means that the Agent for the Landlord understood the Tenants were leaving and she was taking appropriate measures to mitigate her losses.

I find that the letter from the Agent for the Landlord to the Tenant, dated August 27, 2012, does not constitute a mutual agreement to end the tenancy. In my view the Agent for the Landlord is simply attempting to clarify whether the Tenant intends to vacate the rental unit or to remain in the rental unit until the end of the fixed term of the tenancy.

I specifically note that the *Act* does not authorize either party to end a tenancy unless the agreement is in writing. Even if I were to accept the female Tenant's testimony that the parties verbally agreed to end the tenancy, I find that such an agreement does not end the tenancy in accordance with the *Act*.

Based on the undisputed evidence presented at the hearing, I find that the Tenant paid no rent for September of 2012. As the tenancy agreement required the Tenant to pay rent in advance by the last day of the month and neither party had properly ended the tenancy by August 31, 2012, I find that the Tenant was obligated to pay rent for September by August 31, 2012. As this rent has not been paid, I find that the Tenant must pay \$1,300.00 in outstanding rent to the Landlord.

I specifically note that the Tenant had the opportunity to pay the rent for September when the male Tenant spoke with the Landlord on September 03, 2012.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. On the basis of the undisputed evidence presented at the hearing, I find that by September 03, 2012 the Tenant had received a Notice to End Tenancy which declared that the Tenant must vacate the rental unit by September 11, 2012. I find that this tenancy was ended by the Landlord pursuant to section 46 of the *Act*.

I dismiss the Landlord's claim for compensation for lost revenue for the months of October and November, as that claim is premature. As it is entirely possible that the Landlord may be able to rent the unit for those months, I find that it would not be reasonable to grant compensation for those months at this time. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for lost revenue if she is unable to find new tenants.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,350.00, which is comprised of \$1,300.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$650.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$700.00. 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: September 26, 2012.

Residential Tenancy Branch