



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF, CNR, MT

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenant.

Both parties attended the hearing of this matter and gave evidence under oath.

Background and Evidence

The tenant submitted that he had vacated the rental unit and he wished to withdraw his application for more time to cancel the Notice to End Tenancy given for unpaid rent and his application to cancel that Notice.

The tenant also submitted that he is agreeable to paying August 2012 rent in the sum of \$620.00.

The landlord agreed that the tenant has now vacated and that she too was willing to withdraw her applications and accept the tenant's offer of \$620.00 for August rent.

The landlord then stated that she wished to receive August rent and she wished to retain the \$300.00 security deposit for a total award of \$920.00 plus recovery of the filing fee paid for this application. The landlord then went on to request all costs she incurred to make this claim.

The landlord submitted that because the tenant did not give notice of his intentions to vacate she believed she was entitled to August rent as well as partial rent for September and she was therefore seeking to claim \$300.00 security deposit to cover some of September's rent.

The tenant objected to the landlord being allowed to retain the \$300.00 security deposit in addition to receiving a monetary award for August rent as agreed. The tenant states that the landlord knew he would vacate the rental unit in August because, in addition to serving him with a 10 day Notice to End Tenancy for unpaid rent the landlord served

him with a 1 month Notice to End Tenancy for Cause effective August 31, 2012 which notice the tenant did not dispute. Further the tenant testified that the rental unit was re-rented for the month of September.

The landlord agreed that the rental unit was re-rented for September.

Analysis and Findings

At the start of this hearing tenancy the tenant withdrew his claims and agreed to pay the landlord for August 2012 rent in the sum of \$620.00 and the landlord accepted this settlement and withdrew her claims.

Then the landlord changed her mind and requested to retain the security deposit and to recover the costs of making this application in addition to the \$620.00 August rent as agreed.

The tenant objected to the landlord retaining the deposit in addition to the agreed settlement terms. I find this to be appropriate. I make this finding because the landlord agreed to settlement terms then reneged on her agreement and attempted to extract further monies from the tenant. Further, even if the landlord had not agreed to the settlement terms, I find she has failed to prove a further loss that is of September's rent, because the rental unit was re-rented. She has also failed to show that the tenant vacated without notice and thereby should be held responsible for any part of September's rent. The evidence shows that the landlord served the tenant with a 1 month Notice to End Tenancy effective August 31, 2012 which the tenant did not dispute. When a tenant does not dispute a notice the Act states that the tenancy ends on the effective date on the Notice. The tenant is not required to give notice when served with such a notice.

Finally, with the landlord's claim for recovery of costs to bring this claim the only costs I am authorized under the Act to reimburse is the filing fee of \$50.00. As both parties paid a \$50.00 filing fee to bring their claims I will allow neither party to recover from the other.

I therefore find that the landlord is entitled to the \$620.00 sum offered in settlement less the \$300.00 security deposit the tenant paid for a total monetary award of \$320.00.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order as any Order of the Provincial Court of British Columbia.

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 10, 2012.

Residential Tenancy Branch