



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

SS, MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for authorization to serve documents or other evidence in a different manner than required by the *Residential Tenancy Act (Act)*; a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent and utilities; for a monetary Order for damage; 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 Landlord withdrew the application for authorization to serve documents or other evidence in a different manner than required by the *Act*.

The female Landlord stated that she personally served the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to reply upon as evidence to the Tenant on October 02, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue, for unpaid utilities, for advertising costs, and for a "bonus" paid to a new tenant; and to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the Landlord, the Tenant, and a co-tenant entered into a fixed term tenancy agreement that began on March 01, 2011 and ended on September 30, 2011, at which time it was to continue as a periodic tenancy or another fixed term.

The Landlord submitted an amended copy of the aforementioned tenancy agreement in which the female Landlord and the co-tenant agreed to extend the fixed term of the tenancy agreement to September 30, 2012.

The terms of the tenancy agreement required the Tenant and the co-tenant to pay monthly rent of \$1,400.00 by the first day of each month and to pay 50% of the utilities.

The female Landlord stated that the parties subsequently agreed that the Tenant would pay a lump sum of \$150.00 for utilities. The female Landlord stated that the Tenant paid a security deposit of \$700.00.

The female Landlord provided a detailed account of money paid by the Tenant between September 01, 2012 and July 31, 2012, which totaled \$10,845.00. The Landlord is seeking compensation, in the amount of \$4,126.00, for unpaid rent and utilities during this period.

The female Landlord stated that on June 25, 2012 the Tenant asked them if they could move out on July 15, 2012; that the Landlord agreed they could move out on July 15, 2012 providing the Tenant paid all of the rent owed by August 15, 2012; that the arrears was not paid by August 15, 2012; that the parties did not sign a mutual agreement to end the tenancy; that neither party gave written notice to end the tenancy; and that the Tenant vacated the rental unit on July 22, 2012.

The Landlord is seeking compensation for lost revenue from August of 2012, in the amount of \$1,400.00 in rent and \$150.00 in utilities. The female Landlord stated that she advertised the rental unit on two popular websites, and refreshed one of those ads at least 8 times. She stated that the unit was shown to approximately 45 prospective tenants and that it was eventually rented for September 01, 2012.

The female Landlord stated that the Landlord eventually offered a bonus of \$500.00 in an attempt to secure a new tenant, for which the Landlord is seeking compensation. The Landlord is also seeking compensation, in the amount of \$33.58, for advertising costs.

Analysis

I find that the Tenant and the Landlord entered into a fixed term tenancy agreement that began on March 01, 2011 and ended on September 30, 2011. While I accept that the co-tenant agreed to enter into another fixed term that expired on September 30, 2012, I find that the Tenant did not initial or sign the amendment to indicate that she was in agreement with that amendment. I therefore cannot conclude that the Tenant entered into another fixed term.

As the Tenant did not enter into another fixed term tenancy, I find that her tenancy continued on a month to month basis, under the same terms as the original agreement, pursuant to section 44(3) of the *Act*. On the basis of the undisputed evidence, I find that the Tenant was obligated to pay rent of \$1,400.00 by the first day of each month and a monthly utility fee of \$150.00.

I therefore find that the Tenant should have paid \$17,050.00 in rent/utilities for the period between September 01, 2011 and July 31, 2012. As the Tenant only paid \$10,845.00 during this period, I find that the Tenant owes the Landlord \$6,205.00 in rent/utilities for this period. I therefore find that the Landlord is entitled to the full amount

of their claim for unpaid rent/utilities for the period between September 01, 2011 and July 31, 2012, which was \$4,126.00. I am unable to award more than that amount, regardless of the amount calculated, as the Landlord has not applied for more than that amount.

Section 44(1)(a) of the *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 written 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 the Tenant was required to vacate at the end of the fixed term of the 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. I find that this tenancy ended when the Tenant vacated the rental unit on July 22, 2012.

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 the Tenant failed to provide the Landlord with written notice of the Tenant's 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 ended the tenancy in accordance with section 45 of the *Act* prior to vacating the rental unit; the Landlord made a reasonable effort to find a new tenancy for August of 2012; and the Landlord would not have suffered a loss of revenue for August if the Tenant had complied with section 45 of the *Act* when providing notice on June 25, 2012, I find that the Landlord is entitled to compensation for lost rent revenue from August of 2012.

As the Tenant did not use any utilities in August of 2012, I find that the Tenant is not obligated to pay any portion of the utilities for August.

I find that the Landlord is not entitled to compensation for the bonus paid to secure a new tenant or for advertising costs, as those are expenses the Landlord would have

incurred even if the Tenant ended this month to month tenancy in accordance with section 45 of the *Act*.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,576.00, which is comprised of \$4,126.00 in unpaid rent; \$1,400.00 in lost revenue from August of 2012; 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 security deposit of \$700.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$4,876.00. 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: December 19, 2012.

Residential Tenancy Branch