



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application made by the landlord seeking:

1. A monetary Order;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

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

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

The landlord submitted a written Tenancy Agreement dated as having been signed by the parties on August 20, 2012. That Agreement states, that the fixed term would begin on September 1, 2013 and end on August 31, 2013 thereafter continuing on a month-to-month basis if the fixed term was not renewed. Rent was fixed at \$950.00 per month and the tenant paid a security deposit of \$475.00. The Tenancy Agreement contains the following liquidation clause:

...if the Tenant terminates the tenancy before the end of the original term the Landlord may, at the landlord's option treat this Tenancy Agreement as at an end and in such event the sum of \$950.00 shall be paid by the tenant to the Landlord as liquidated damages and not as a penalty.

The payment of the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other rights or remedies available to the Landlord.

The landlord submits that the tenant vacated the rental unit after only 2 months in residence. The landlord says the tenant supplied written Notice of her intention to vacate on October 19, 2012 and she then vacated on or about October 31, 2012. The landlord now claims \$950.00 in rent for November 2012, \$950.00 in liquidated damages and \$475.00 as the security deposit for a total claim of \$2,375.00.

The landlord testified that he agreed to try to find a new tenant and he attempted to do so but was unable to secure a new tenant until December 1, 2012.

The tenant says she did not sign the Tenancy Agreement on August 20, 2012 and this was impossible because she was in Europe at the time. The tenant says that while she can provide proof of her whereabouts on August 20, 2012 she did not supply that proof at this hearing because she did not know she had to do so. The tenant says she was asked to sign the Tenancy Agreement after she moved into the rental unit and she thought it was only a formality to document that the landlord was leaving some goods in the rental unit for her use such as a two burner hot plate. The tenant says that that while she did sign the Tenancy Agreement she did not read it and was unaware of its terms.

The tenant says she would have stayed in the rental unit but she is a single mother and she feared for the emotional and physical safety of her daughter who was alarmed by the fighting that was going on around the rental building which caused her daughter to "...cower..." in fright. The tenant believes it is the landlords who are fighting in the main house but says she cannot be sure who it is. The tenant says she did report the matter to the landlord verbally. The tenant testified that she did not report the matter in writing nor did she call the police. The tenant agrees she did not make an application to the Residential Tenancy Branch seeking to rectify the situation but chose instead to vacate for the wellbeing of her daughter. The tenant testified that it was a stressful ordeal to vacate. The tenant testified that she gave her notice and would have stayed until the end of November but the landlord asked her to leave earlier because he was going on vacation and wanted a new tenant settled into the rental unit before he left. On this point the tenant pointed to an email from the landlord stating "Someone just calls me again and she wants to come tomorrow about 5:30PM to view the suite instead of Tuesday at 1PM. And also she asks that is it possible to move in earlier and ASAP" (*reproduced as written*) in response to which the tenant replied "The earliest I can move out is Wednesday the [October] 31st. I will make plans to do so." In another email the tenant stated that "Michael" finished cleaning and that the security deposit could be returned to him because "I am not comfortable giving you a forwarding address..." and "I will not be paying Nov. Rent..." on the basis of her daughter's fears and the belief that

the landlord had asked her to move out early and she "...can not pay 2 rents..."
(reproduced as written).

The landlord says that the story about the fighting in the main house is not true. The landlord says he and his wife have been happily married for 30 years. The landlord says not only does he have a good relationship with his wife but that they have had tenants for 10 years and have never received complaints about noise or fighting. The landlord says that if he and his wife were talking too loudly the tenant never mentioned a problem with the noise level. The landlord submitted a letter from another tenant who has resided in the rental building since June 2011 written to "...express my complete satisfaction with [the landlords] as landlords of the property..." and that he has "...never once witnessed or heard a negative interaction between the two of them".

Analysis

The tenant agrees that she signed a fixed term Tenancy Agreement although she says she did not read it. The tenant says she signed the Agreement after she moved in (after September 1, 2012) and it is impossible that she signed it before move in because she was in Europe on August 20, 2012 when the Agreement was dated. While the tenant says she can provide evidence that she was in Europe on August 20, 2012 but she did not do so. The tenant says she did not think she needed to prove she was not in the country on August 20, 2012. I find this difficult to believe. The tenant was duly served with the landlord's application and therefore knew full well the claims being made against her. If it was her intention to claim she was somehow forced to sign the Tenancy Agreement after she had already moved in then it would be prudent for her to bring evidence to support so such an allegation.

As to the tenant's assertion that she signed the Tenancy Agreement without reading it, I find it very difficult to believe whether the tenant was moved-in or not, that the tenant or any capable person (as the tenant appears to be) would sign any contract at any time without reading it. Even if I were to accept this as true, a party who would do this, does so at his or her own peril. However, on a balance of probabilities I do not believe this to be the case. I believe the tenant did sign the contract knowing full well what she was signing and when, for whatever reason, she chose to break the contract and she did so. It is her assertion that she broke the contract because of fighting that was frightening her daughter however she took almost no steps to deal with the issue. Fighting so severe as to have a child cowering would surely warrant some parental action. Based on a balance of probabilities I find that this is likely not the reason the tenant wished to end this tenancy and that there was no coercion, danger or other possibly legitimate reason to break the contract she had made.

With respect to the tenant's assertion that the landlord asked her to leave early, I do not believe this is what he was doing. It is clear to me that he was trying to alleviate the tenant of some of her obligation under her contract by trying to secure a new tenant and he was simply inquiring if the tenant would be able to leave earlier than she planned to facilitate this outcome.

In any event, even if this were not a fixed term tenancy a notice given on October 19, 2012 as the parties agree was given could not end the tenancy until November 30, 2012 so the tenant is responsible for rent for the notice period. While the tenant says the landlord re-rented the premises in November the landlord says he did not re-rent the premises until December 1, 2012. Overall based on the findings set out above, I prefer the evidence of the landlord.

With respect to the liquidated damages clause I find this to be appropriate in the case. The tenant agreed that if she ended the tenancy before the end of its fixed term she would pay the landlord \$950.00. As she did end the tenancy before the end of its fixed term and she has not proven cause to do so, I find she is responsible for the \$950.00 liquidated damages she agreed to pay which sum I do not find to be unreasonable sum in the circumstances.

With respect to the landlord's claim for the \$475.00 security deposit which he has added to his claim, as that sum has been received by the landlord I will allow him to retain that sum and it shall be deducted from the amount of the award made herein not added as set out in the landlord's claim.

Further, as the landlord has been successful in his claim I will allow him to recover the filing fee paid for this application.

November rent in lieu of Notice	\$950.00
Liquidated damages	950.00
Filing fee	50.00
Less security deposit (no interest accrued)	-475.00
Balance owing by tenant to landlord	\$1475.00

Conclusion

The landlord is provided with an Order in the above terms. 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: February 18, 2013

Residential Tenancy Branch

