



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yorkson Investment Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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 a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; 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.

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

The Landlord submitted a copy of the Tenant's email in which she informs the Landlord she is ending the tenancy; a copy of the Tenant's letter in which she informs the Landlord she is ending a tenancy; and a copy of a condition inspection report. The Agent for the Landlord stated that these documents were served to the Tenant with the Application for Dispute Resolution. The Tenant stated that she did receive the Application for Dispute Resolution but she did not receive the other three documents. The Landlord was provided with the opportunity to testify regarding these documents and it was therefore not necessary for me to refer to the physical documents.

On March 18, 2013 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.

On March 21, 2013 the Landlord submitted one document to the Residential Tenancy Branch, a copy of which was served to the Tenant. The Landlord acknowledged receipt of the document and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for liquidated damages; ad for compensation for painting the rental unit?

Background and Evidence

The Tenant submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on October 01, 2012 and was to continue until September 30, 2013, at which time it was to continue as a periodic tenancy. The agreement declares that the Tenant is required to pay rent of \$1,270.00 by the first day of each month. The parties agree that these were terms of their tenancy.

There is a liquidated damages clause in the agreement that indicates the Tenant must pay \$200.00 in liquidated damages, which shall release the Tenant from paying rent for the balance of the term of the agreement. The parties agree that these were terms of their tenancy.

The Landlord and the Tenant agree that on December 13, 2012 the Tenant sent the Landlord an email, in which she informed the Landlord that she will be ending the tenancy in January or February, but she understands she will be responsible for paying rent for January.

The Landlord and the Tenant agree that sometime after December 13, 2013 the Tenant provided the Landlord with a letter in which she informed the Landlord she would be ending the tenancy on December 31, 2012. The parties agree that the rental unit had been vacated by 1:00 p.m. on December 31, 2012.

The Landlord is seeking compensation of \$1,270.00 for lost revenue from January of 2013, as the "late notice" prevented the Landlord from finding a new tenant for January.

The Tenant stated that after she sent the email on December 13, 2012 she read the liquidated damages clause in the tenancy agreement and determined that she would not be obligated to pay rent if she vacated the unit prior to January of 2013. She stated that she did not really understand what the \$200.00 liquidated damages were for but she did understand she would have to pay it if she ended the tenancy prior to the end of the fixed term of the agreement.

The Agent for the Landlord stated that the \$200.00 in liquidated damages is intended to compensate the Landlord for administrative costs associated to re-renting the rental unit if the Tenant ends the tenancy before the end of the fixed term of the agreement.

The Landlord is seeking compensation, in the amount of \$150.00, for painting two walls in the unit. The Building Manager stated that the Tenant's furniture damages two walls

in the living room, which had to be repaired and painted. The Tenant stated that the walls were not damaged at the end of the tenancy.

The Landlord submitted no photographs of the walls that were allegedly damaged. The Agent for the Landlord stated that the damage to the walls was noted on the condition inspection report that was completed on December 31, 2012. The Building Manager stated that the Tenant was not present when this report was completed and that the Landlord did not schedule a time with the Tenant to complete this report.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a fixed term tenancy agreement, the fixed term of which ended on September 30, 2013.

Section 44(1)(a) of the *Residential Tenancy Act (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*. There is no evidence to show that the Landlord served notice to end this tenancy and I therefore find that the Landlord did not end this tenancy in accordance with section 44(1)(a) of the *Act*.

Section 45(1) of the *Act* stipulates that a tenant can end a periodic tenancy by providing the Landlord with written notice of a 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 this tenancy did not revert to a periodic tenancy until after September 30, 2013, I find that the Tenant did not have the right to end this tenancy in accordance with section 45(1) of the *Act* until September 30, 2013.

Section 45(2) of the *Act* stipulates that a tenant can end a fixed term tenancy by providing the Landlord with written notice of a 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, is not earlier than the date specified in the tenancy agreement, and is the day before the date that rent is due. As this fixed term of the tenancy did not expire until September 30, 2013, I find that the Tenant did not have the right to end this tenancy in accordance with section 45(2) of the *Act* until September 30, 2013.

As the Tenant did not have the right to end this tenancy pursuant to section 45 of the *Act*, I find that the Tenant did not end this tenancy in accordance with 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 the tenancy agreement did not require the Tenant to vacate the rental unit at the end of the fixed term 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, or before, December 31, 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*.

As this tenancy ended prior to January 01, 2013, I find that the Tenant was not obligated to pay rent on January 01, 2013. I do find that the Tenant is obligated to compensate the Landlord for lost revenue arising from her failure to give notice to end this tenancy in a manner that complies with section 45 of the *Act*. I find that her decision to vacate the rental unit on December 31, 2012 without providing proper notice to end the tenancy, directly contributed to the Landlord's inability to find a new tenant for January of 2013. I therefore find that the Tenant must compensate the Landlord for rent for January, in the amount of \$1,270.00.

The undisputed evidence is that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$200.00 to the Landlord if the Tenant prematurely end this fixed term tenancy and that the \$200.00 payment releases the Tenant "from liability to pay rent for the balance of the term of this Agreement".

Section 5 of the *Act* stipulates that landlords and tenants may not avoid or contract out of the *Act* and that any attempt to avoid or contract out of the *Act* is of no effect.

I find that the liquidated damages clause of the tenancy agreement would be enforceable if the Landlord and the Tenant mutually agreed to end this tenancy on a specific date, as that is a method of ending the tenancy that complies with section 44(1)(c) of the *Act*.

I find that the liquidated damages clause has no effect in these circumstances, where the Tenant ended the tenancy by giving notice to end the tenancy in a manner that does not comply with section 45 of the *Act*. As the liquidated damages clause cannot bestow a right on the Tenant that directly contravenes the Tenant's obligations under the *Act*, I find that this clause is of no force or effect. I therefore find that the Landlord cannot collect the \$200.00 in liquidated damages and the Tenant cannot rely on this clause to avoid her obligation to end the tenancy in accordance with the *Act*.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged walls in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's claim that the walls were damaged or that refutes the Tenant's testimony that they were not damaged. As the Landlord has failed to establish that the Tenant damaged the walls, I dismiss the claim for compensation for repairing the walls. In determining this matter I have placed no weight on the condition inspection report that was completed in the absence of the Tenant, as the inspection was not scheduled in accordance with section 17 of the Residential Tenancy Regulations.

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

The Landlord has established a monetary claim, in the amount of \$1,320.00, which is comprised of \$1,270.00 in lost revenue and \$50.00 in compensation for the fee for filing this Application for Dispute Resolution. Pursuant to section 72(2) I authorize the Landlord to retain the security deposit of \$635.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$685.00. 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: April 03, 2013

Residential Tenancy Branch

