



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, 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 unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The male Landlord stated that 23 pages of evidence were submitted to the Residential Tenancy Branch and mailed to the Tenant on March 06, 2013. The Tenant acknowledged receiving 23 pages of evidence. The evidence that the Landlord stated was submitted to the Residential Tenancy Branch was not available to me at the time of the hearing on March 18, 2013. The male Landlord requested an adjournment to provide the Landlord an opportunity to resubmit the 23 pages to the Residential Tenancy Branch. As it is entirely possible that these documents have been lost or misfiled by the Residential Tenancy Branch, the request for an adjournment was granted. The evidence was available to me at the time of the reconvened hearing.

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

The hearing was reconvened on June 03, 2013 and was concluded on that date. Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord is entitled to a monetary Order for unpaid rent/loss of revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement for a tenancy that began on December 01, 2012; that the fixed term of the tenancy ended on November 30, 2013, after which it was to continue on a month-to-month basis; that the tenancy agreement required the Tenant to pay monthly rent of \$2,800.00 plus internet fees of \$31.00 by the first day of each month; that the Tenant paid a security deposit of \$1,400.00; that the Tenant paid a pet damage deposit of \$1,400.00; and that the Tenant provided the Landlord with a forwarding address, via email, on December 04, 2012.

The Landlord and the Tenant agree that a condition inspection report was started on December 01, 2012 but was not completed; that the parties agreed to continue with the report at a later time; and that the move-in inspection was never completed because the Tenant determined that they were not going to move in. The parties agree a condition inspection report was completed on December 06, 2012 when the rental unit was vacated.

The Landlord and the Tenant agree that on December 02, 2012 the Tenant informed the Landlord they did not wish to continue the tenancy; that the parties met on December 02, 2012 to determine whether the Tenant's concerns about the rental unit could be addressed; that on December 04, 2012 the Tenant sent the Landlord an email in which they informed the Landlord that they were ending the tenancy on December 07, 2012; and that the Tenant vacated the rental unit on December 06, 2012.

The Landlord submitted a copy of the aforementioned email that was sent on December 04, 2012. In the email the Tenant declared that they were ending the tenancy because there is mould on a variety of surfaces in the rental unit; that the house and yard require additional cleaning; that the heat vents are not clean; that the toilets are stained and do not work properly; that there is personal property in the garage; and that there is a large container in the front yard.

The Landlord and the Tenant agree that rent has not been paid for December of 2013. The Landlord is seeking compensation for unpaid rent from December and lost revenue from January of 2013. In support of the claim for lost revenue the Landlord stated that the rental unit was advertised on several popular websites; that the advertisements started on December 06, 2013; and that the advertisements ran continually until the unit was rented for February 01, 2013. The female Tenant stated that she noticed an online advertisement for the rental unit on December 02, 2013.

The Landlord and the Tenant agree that when this tenancy began there was a large storage container on the property; that the storage container was not on the property when the parties entered into this tenancy agreement; and that the storage unit was not discussed when the parties entered into the tenancy agreement.

The Landlord and the Tenant agree that when this tenancy began the Tenant informed the Landlord that the Tenant did not want the storage container on the residential property and that the Landlord offered to hide the container with a trellis. The male Landlord stated that he strongly encouraged the Tenant to accept his offer of a trellis but that he did indicate he would move the container if the Tenant was adamant about having it moved. The male Tenant agreed that the Landlord did mention the possibility of moving the container; that the Landlord told him it would take one or two weeks to move the container, although the timing was not made particularly clear; and that the Landlord did not firmly commit to moving the container.

The Tenant contends that the rental unit was not ready when they arrived on December 01, 2012. The female Tenant stated that there was mould in various areas in the home; that various areas of the home needed cleaning, including the carpet; that a drywall repair in the bathroom had not been completed; that the heating vents required cleaning; that none of the toilets worked properly; that the toilets were stained; that the exterior decking was slippery as a result of algae; that the exterior lights did not work; that the garage door opener did not work; that the laundry room sink leaked; that the hot tub did not work; and that property belonging to the Landlord was still in the garage.

The photographs on the DVD submitted in evidence by the Tenant shows that the rental unit required a significant amount of cleaning.

The Landlord agreed that the rental unit required cleaning at the start of the tenancy; that on December 01, 2012 the rental unit was in the same condition it was in when the Tenant viewed the unit prior to entering into the tenancy agreement; that there is not a problem with mould in the rental unit; that the exterior lights did work at the start of the tenancy; that the carpets had been recently cleaned but may have been stained when people were moving in/out; that the garage door opener simply needed a new battery; that the hot tub was functional but was empty because they were waiting for a new cover; and that the decks were slippery because of rain.

The Landlord submitted a copy of an inspection report, dated December 07, 2012, from a restoration company. The report declares that the unit was visually inspected and that the walls were checked with a non-invasive moisture meter; that an elevated moisture count was detected behind the ceramic tiles in a bathroom; that no musty odours were detected; and that no visual signs of mould were detected.

The Tenant did not submit a report from a qualified technician to corroborate their concerns about the presence of mould.

The Landlord and the Tenant agree that the Landlord did offer to clean the rental unit. The male Landlord stated that he also offered to repair a variety of the deficiencies with the rental unit, as noted on the condition inspection report. The condition inspection report, which was submitted in evidence, indicates that the Landlord will remedy the toilet staining; remedy the caulking in the bathroom; repair the garage door remote

control(s); and provide the services of a professional cleaner. The male Landlord stated that he also offered to clean the vents and that they have since been cleaned.

The Landlord has claimed compensation, in the amount of \$70.00, for fees associated to a stop payment that was placed on the rent cheque that was tendered by the Tenant. The Landlord has submitted no documentary evidence to establish that these costs were incurred.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy that began on December 01, 2012; that the fixed term of the tenancy agreement ended on November 30, 2013; that the tenancy agreement required the Tenant to pay \$2,831.00 in rent/internet fees by the first day of each month; and that the rent that was due on December 01, 2012 has not been paid.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates that a tenant must pay rent when it is due whether or not the landlord complies with the Act or the tenancy agreement. I therefore find that the Tenant must pay the \$2,831.00 in rent/internet fees that was due on December 01, 2012.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant gives notice to end the tenancy in accordance with section 45 of the *Act*, or if the Landlord gives notice to end the tenancy in accordance with 46, 47, 48, 49, 49.1, and 50 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 to end the tenancy. As this was not a periodic tenancy, I find that the Tenant did not yet have the right to end the tenancy in accordance with section 45(1) of the *Act*.

Section 45(2) of the *Act* stipulates that a tenant cannot give notice to end a fixed term tenancy agreement on a date that is earlier than the date specified in the tenancy agreement as the end of the tenancy. As this was a fixed term tenancy, the fixed term of which did not end until November 30, 2013, I find that the Tenant did not yet have the right to end the tenancy in accordance with section 45(2) of the *Act*.

Section 45(3) of the *Act* stipulates that if a landlord fails to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. I find that the email that was sent on December 04, 2012 does not satisfy the requirements of section 45(3) of the *Act*, as it served to end the tenancy rather than to provide the Landlord with notice that deficiencies needed to be corrected. Even if I did conclude that the email of December 04, 2012 served as notice to remedy some deficiencies, I would find that the Tenant did not provide the Landlord with reasonable time to correct those deficiencies, as the email ended the tenancy on December 07, 2012, which is not a reasonable amount of time to remedy some of the concerns expressed by the Tenant, particularly the concerns about the storage container. For these reasons, I find that the Tenant did

not have the right to end the tenancy on December 07, 2012 in accordance with section 45(3) of the *Act*.

I note that I have not determined whether the condition of the residential complex at the start of the tenancy and the presence of the storage container is a breach of a material term of a tenancy agreement, as that determination is not relevant to my decision. Even if they were breaches of a material term of the agreement, the Tenant did not provide the Landlord with a reasonable opportunity to remedy the deficiencies and the Tenant did not, therefore, have the right to end this tenancy on December 07, 2013, in accordance with section 45(3) of the *Act*.

In determining this matter I was influenced, to some degree, by the undisputed evidence that the Landlord discussed the possibility of moving the storage locker and that the Landlord had offered to clean the rental unit and repair some of the deficiencies with the rental unit. This causes me to believe that the Landlord would have remedied at least some of the deficiencies if the Landlord had been provided a reasonable amount of time, as is required by section 45(3) of the *Act*.

As the Landlord did not give notice to end the tenancy and the Tenant did not yet have the right to end the tenancy in accordance with section 45 of the *Act*, I 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 tenancy agreement required the Tenant to vacate at the end of the fixed term, 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 December 06, 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 the terms of the tenancy agreement and with the *Act* when the Tenant ended the tenancy prior to the end of the fixed term of the tenancy agreement. I find that the Landlord lost revenue in January of 2013 as a result of the Tenant's failure to comply with the tenancy agreement/*Act* and that the Landlord made a reasonable effort to mitigate this lost revenue by advertising the rental unit in a

timely manner. I therefore find that the Tenant must compensate the Landlord for the \$2,831.00 in lost revenue that was experienced in January of 2013, pursuant to section 67 of the *Act*.

As the Landlord has submitted no documentary evidence to establish that \$70.00 in banking costs were incurred when the Tenant placed a stop payment on a rent cheque that had been tendered, I dismiss the Landlord's claim for these costs.

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 \$5,762.00, which is comprised of \$5,662.00 in unpaid rent/lost revenue and \$100.00 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 and pet damage deposit, in the amount of \$2,800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,962.00. 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: June 05, 2013

Residential Tenancy Branch