



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

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

1. A monetary Order for damage, compensation for loss and unpaid rent;
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.

Preliminary Issue

At the hearing of this matter the landlord requested an adjournment. She said she was not well prepared to proceed due to medical problems faced by her family recently.

The tenant objected saying he wished to get the matter over with.

The Residential Tenancy Branch Rules of Procedure set out how an adjournment may be requested:

6.1 Rescheduling of a dispute resolution proceeding by consent more than three days in advance

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the Dispute Resolution Officer to reschedule the dispute resolution proceeding by: submitting to the Residential Tenancy Branch, at least three (3) business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or

Having an agent represent him or her attend the dispute resolution proceeding to make a request to the Dispute Resolution Officer to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

The landlord did not avail herself of these options and while it remained open to her to seek an adjournment at the hearing, the tenant is objecting to the adjournment.

The landlord says her mother had a stroke and passed away in March, her father is in residential care and a young close family member began cancer treatments in January. Also, since the filing of the application on February 4, 2013, the landlord has been repairing and cleaning the rental house, finding new tenants and switching the mortgage to a new bank all while working full time. The landlord requested an adjournment so that "...we may prepare and submit evidence package..." Having to work, clean and repair the rental unit and transfer mortgage is no reason not to spend time gathering and serving evidence to support a lawsuit once has undertaken. While there may be medical issues that have occurred in the landlord's family that have resulted in her being unable to prepare, the landlord has not provided evidence of these issues from which it could be reasonably concluded that the landlord was incapacitated by them such that she was unable to gather evidence to support her claim. Further, the landlord has submitted evidence so it is clear that she had wherewithal to do so. Finally, there are two landlords named in this application and both could have performed preparation tasks or appointed an agent to attend to matters on their behalf. Overall I am not

satisfied that this matter should adjourned for the reasons stated. The adjournment request was therefore declined and the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

Background and Evidence

This tenancy began earlier however the final Residential Tenancy Agreement was made between the parties commencing this tenancy on June 1, 2012 for a period of 14 months ending September 1, 2013 at which time it would become a month-to-month tenancy. Rent was fixed at \$900.00 per month and the tenants paid a security deposit of \$450.00. The Addendum to the Tenancy Agreement states that in addition to their rent, the tenants were also responsible for 60% of Fortis, BC Hydro and Water and Sewer charges.

The landlords say that despite the fixed term the tenants vacated the rental unit prior to the end of the term leaving cleaning to be done, utilities to be paid and other damages. The landlord claims the following sums:

2 Months Rent	\$1,800.00
Estimated Utilities	555.00
Cleaning	300.00
Carpet Cleaning	120.00
Damage repair	270.00
Furniture Removal costs	100.00
Snow removal	50.00
Total	\$3,195.00

The landlord did not provide receipts of the cleaning, repairs or removal charges. The landlords say the tenants advised them that they were being transferred out of province and they wished to vacate. In response to this the landlord wrote to the tenants via email on November 16, 2012:

This is a bit of a situation as that you and Liam requested and signed a “fixed term tenancy” (aka: lease) with a term ending date of Sept. 2013. As per the BC Residential Tenancy Act, we are both required to honor this agreement.

We, as the landlord do have an option to consider any early departure/end of tenancy at your request and as an gesture of good faith, we would consider a March 1, 2013 end to the tenancy provided that we can find and secure suitable tenants for the house.

If you wish to proceed with a March 1, 2013 end tenancy, you are required to provide written notice. Please review the tenancy act for details on how to do so (unfortunately email is not acceptable)...please give us a call...if you wish to discuss further, hopefully we can sort something out that works for everyone.

(reproduced as written)

On November 25, 2012 the landlord received an email from the tenants stating in part:

We are contacting you today to serve official request to End Tenancy of your rental property at [address removed]. Although we have a Fixed-term Tenancy agreement, we would like to depart early, and as per our agreement, will be vacating for January 15th. Also as part of our agreement, we are aware that you may require several months in order to find Suitable tenants, and as such are prepared for the eventuality of paying February's rent. Hopefully before that point you will be able to find suitable Tenants, and if so, an agreement will need to be reached on how recompensation will be made to cover the point in February at which you rent the unit, to the start of March.

(reproduced as written)

On December 12, 2012 the tenants emailed the landlord again stating in part:

Thanks again for deciding to let Sam and myself end our Fixed term tenancy early.

(reproduced as written)

To which the landlord responded also on December 12, 2012:

We need to sort some things out...We have NOT agreed to end your lease. We did say that we would consider new, suitable tenants for a March 1 occupancy (as per Nov. 16 email below). This does not excuse you from your September 2013 lease obligation until you receive written confirmation from us (email does not constitute written notice – tenancy act rules – not ours). We definitely **would not** consider new tenants for a midmonth date, ie.: Jan 15/13

On December 13, 2012 the tenant responded in part:

Sam and myself are well within our rights under the Tenancy act to request the right to Assign our lease. Although considering the paperwork involved in Assigning, this is a process we would rather avoid. Especially since there is more than adequate time for tenants to be found. Sam has had several responses to her ad and a couple dates for people to come by and view.

(reproduced as written)

The landlord testified that they began the search for new tenants in December with both the landlord and tenants marketing the rental unit and the tenants forwarding their contacts to the landlord. The landlord says that some prospective tenants referred by the tenants were not interested. One was a welder with a work truck and he was concerned about having no secure storage garage for his truck and tools, others did not want to do yard work, another wanted a dog and while the landlords would entertain having a cat, with hardwood floors in the rental unit and no fencing on the property a dog was not something the landlords were wishing to allow.

The landlord testified that she began aggressively marketing the house in Kijiji, Castanete, Vernon Buy & Sell, Facebook and coffee house posters and there were several showings. The landlords say that they offered incentives to prospective tenants such as offering to pay utilities and waive the pet deposit. The landlord says she also followed up with the tenant to find out what success she was having with marketing. The landlord submitted an email she wrote to the tenants on December 18, 2012 saying in part "...were there any other folks that you recently showed the place to interested? Please forward their contact info if so."

With respect to the move-out inspection, the landlord submitted emails discussions in which the parties were trying to arrange a move-out inspection for December 27, 2012, December 31, 2012 and January 1, 2013. However, the landlord says it is their understanding that the rental unit had to be completely vacant before a move-out inspection could be performed and by January 2, 2013 the tenants had still not

completely moved out. The landlord produced an email dated January 2, 2013 in which the tenant states:

What I'm trying to say is Saturday we'll be all gone. I'm trying to arrange to get the piano moved before Saturday, but if I can't we'll move in later the month.

On January 4, 2013 the female tenant emailed the landlords to advise "...the house is officially empty..." However, on January 6, 2013 the male tenant advised "I attempted to remove the love seat but was unable to...when I am in town I can come by and try to dismantle it". Further that they were "...pretty sure we grabbed all of..." their goods from the freezer but advising the landlords that they could have anything that was left. The tenants were leaving the province and the landlords were never able to connect with them to complete a move-out inspection and the landlords completed the inspection themselves on January 31, 2013 noting a number of deficiencies.

The landlord submits that they never received a proper written notice to vacate until they received a letter from the tenants' lawyer on January 31, 2013 advising that the tenants had ended their tenancy effective January 15, 2013. The letter also advised that the tenants would not be paying February's rent. Further, "...your refusal to permit a sublease of the premises acts as termination of the Tenancy Agreement and further you have failed to take any steps to mitigate your damages since their notice was provided on November 28, 2012".

The tenant says that due to a job loss and career change he was transferring out of province for work and he asked the landlord to be able to sublet or reassign the tenancy. The tenant says the landlord refused this request and that this was an unreasonable refusal. The tenant contacted a lawyer who advised that because of the landlord's refusal, the tenancy agreement was void and the tenants were at liberty to vacate.

The tenant says that due to their relocation there was a lack of time at move-out and there may have been items that were not 100% however the tenant submits that the rental unit was in poor condition when they moved in such that they had to do a lot of cleaning at move-in.

The tenant notes that the landlord has provided no invoices for the cleaning, repairs and removals and also notes that he has never seen the utility invoices which have been provided in evidence.

The landlord says the utilities claimed are for the utilities after the tenants vacated. The landlord submits that if they were required to pay rent to the end of the fixed term or until new tenants were found then the tenants should also pay the utilities and snow removal costs which were their responsibility.

Analysis

With respect to the landlords' claims for cleaning, carpet cleaning, damage repair and furniture removal costs, the tenant has admitted that the rental unit may not have been as clean as it could have been. E-mail discussions between the parties, which have not been disputed, indicate that the tenants left items of food in the freezer. While the tenant argued that the rental unit was not clean at move-in, it was the tenants' choice to accept the state of cleanliness at move-in but it remains their duty to ensure the rental unit is clean at move-out. While I find that the landlord has not supplied invoice evidence to prove an expenditure of \$300.00 for cleaning, I will allow a nominal sum of \$50.00 for cleaning as it is likely that she or someone on her behalf would have had some cleaning to do. With respect to the cost of removal of goods and snow removal I am not satisfied with the evidence the landlord has presented in this regard and this claim is dismissed.

With respect to carpet cleaning, while no invoice has been supplied *Residential Tenancy Act* policy does state that tenants have an obligation to clean carpets after tenancies of more than a year. I find \$120.00 for carpet cleaning to be reasonable sum for carpet cleaning and I will allow this claim.

With respect to damage repairs, I am not satisfied with the evidence presented in this regard and this claim is dismissed.

With respect to the claim for rent the evidence shows that this was a fixed term tenancy set to end September 1, 2013. Section 45 of the *Residential Tenancy Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In short, the Act does not allow for a fixed term tenancy to end before the end of its fixed term. The only way such a tenancy may end is by way of a mutual agreement between the parties. I find that the evidence shows that the landlord never agreed to end this tenancy early although they were mindful of the tenants' plight and they did agree to assist the tenants by attempting to find a new tenant to move into the rental unit as soon as possible.

In response to the tenant's argument that the fixed term Tenancy Agreement became "void" because the landlord refused a request to assign or sublet the rental unit as set out above, the only way a fixed term tenancy ends is at the end of the fixed term or by mutual agreement. Therefore even if the tenants had made a formal request to assign or sublet which the landlord unreasonably refused, there is no provision in the Act which makes a Tenancy Agreement "void" as a result. The remedy for the tenants in this situation would be to file an Application for Dispute Resolution seeking to enforce their request to assign or sublet.

In any event, the landlord disputes that the tenants made any formal request to assign or sublet the rental unit and the tenant has failed to produce sufficient evidence to show that such a request was made. In fact the tenants' stated:

Sam and myself are well within our rights under the Tenancy act to request the right to Assign our lease. Although considering the paperwork involved in Assigning, this is a process we would rather avoid.

I find that while the tenants may have entertained making a formal request to assign or sublet the evidence shows that they did not wish to do so likely because of the "paperwork involved". Instead, the evidence shows that the tenants hoped the landlord would find a new tenant, they offered to assist the landlord in doing so, and it is reasonable and probable to conclude that they did so because they knew they were responsible for the payment of rent for some period of time after vacating unless a new tenant could be found and this is evident by their e-mail in which they state:

...we are aware that you may require several months in order to find Suitable tenants, and as such are prepared for the eventuality of paying February's rent. Hopefully before that point **you** will be able to find suitable Tenants...

(emphasis added)

With respect to mitigation, I accept the landlord's evidence and find she has mitigated her damages sufficiently by advertising in many locations and by offering rental

incentives. In the end the evidence shows that the landlord did re-rent the premises as of April 1, 2013. I therefore find it appropriate that the tenants be responsible for rent up to the date the new tenant moved in and I will allow the landlord's claim for \$1,800.00 as claimed.

With respect to the landlord's claim for utility costs, I find this to be inappropriate in the case, the tenants were required to pay 60% of the charges incurred however as they were no longer living in the rental unit they did not incur any charges. I therefore dismiss the claim for utilities.

As the landlord has been successful in this claim I will also allow her to recover the \$50.00 filing fee she has paid for this application.

I will also allow the landlord to retain the security deposit in partial satisfaction of the monetary award made herein.

Calculation of total Monetary Award

Cleaning including carpet cleaning	\$ 170.00
Rent	1,800.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-450.00
Interest from the date the deposit was paid to the date of this Order	0.00
Total Monetary Award	\$1,570.00

Conclusion

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 enforceable 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: May 01, 2013

Residential Tenancy Branch

