



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, and FF

Introduction

This hearing was convened in response to cross applications.

On April 29, 2013 the Landlord filed an 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 the security deposit and to recover the fee for filing an Application for Dispute Resolution.

On June 06, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing an 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 relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

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

Issue(s) to be Decided

Should the security deposit be retained by the Landlord or returned to the Tenant?
Is the Landlord entitled to compensation for unpaid rent/lost revenue?

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement, the fixed term of which began on July 15, 2012 and ended on July 15, 2013,

for which the Tenant agreed to pay monthly rent of \$1,925.00 by the first day of each month. A copy of the tenancy agreement was submitted in evidence.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$950.00; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the male Tenant gave the Landlord a forwarding address, in writing, on April 14, 2013.

The female Tenant stated that she moved out of the rental unit on February 26, 2013 and that she verbally informed the Landlord that she had vacated the rental unit. The Landlord agrees that sometime in February of 2013 the female Tenant informed her that she had vacated the unit.

The Landlord and the male Tenant stated that they spoke, or about, February 28, 2013, at which time the Tenant informed the Landlord that he would also be moving out at the end of March; that they subsequently agreed that the male Tenant would continue to occupy the rental unit at a reduced rate of \$850.00 per month; that rent would continue to be due by the first day of each month; that sometime during the middle of March the male Tenant told the Landlord he would be moving on April 15, 2013; that the Tenant paid \$425.00 in rent for April of 2013; and that the keys were returned on April 14, 2013.

The Landlord is seeking compensation for unpaid rent/lost revenue in the amount of \$950.00, which is the total amount of the security deposit.

The Landlord stated that she did not attempt to re-rent the rental unit after April 14, 2013 because she was attempting to sell the unit. She stated that the unit was sold on July 04, 2013.

Analysis

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*.

Section 45(2) of the *Act* stipulates that a tenant can end a tenancy by giving notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end date of the tenancy. As these parties had entered into a fixed term tenancy agreement, the fixed term of which did not end until July 15, 2013, the Tenant did not have the right to give notice to end this tenancy prior to July 15, 2013, pursuant to section 45(2) of the *Act*.

As the Tenant did not have the right to end this tenancy pursuant to section 45(2) of the *Act* and there is no evidence to show that the Landlord gave notice to end this tenancy in accordance with sections 46, 47, 48, 49, 49.1, or 50 of the *Act*, I find that this 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 the tenancy ended prior to the date specified as the end 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 rental unit was vacated on April 14, 2013.

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*.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant agreed to reduce the monthly rent to \$850.00, effective April 01, 2013, and that only \$425.00 of the rent that was due on April 01, 2013 has been paid. As the Tenant is obligated to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant must pay the remaining \$425.00 in rent that was due on April 01, 2013.

I find that the Tenant failed to comply with the fixed term of the tenancy when the Tenant ended the tenancy prior to July 15, 2013. I find that the premature end to the tenancy resulted in the Landlord losing revenue for the month of May and June of 2013.

Section 7(2) of the *Act* stipulates that when a landlord or tenant claims compensation for damage or loss arising from the other party's failure to comply with the *Act*, the party making the claim must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord was obligated to mitigate her lost revenue by attempting to rent the unit for May 01, 2013. As the Landlord elected not to rent the unit while she was attempting to sell it, I find that she is not entitled to compensation for lost revenue.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution on April 29, 2013, which is 15 days after the tenancy ended.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security

deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I find that the Landlord is not obligated to return double the security deposit.

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

I find the Tenant is not entitled to recover the fee for filing an Application for Dispute Resolution, as I would have ordered the Landlord to return the remaining portion of the deposit even if the Tenant had not filed an Application.

Conclusion

The Landlord has established a monetary claim of \$500.00, which is comprised of \$450.00 in unpaid rent and \$50.00 for the cost of filing an Application for Dispute Resolution. I authorize the Landlord to retain \$500.00 from the Tenant's security deposit of \$950.00, in full satisfaction of this monetary claim.

I order the Landlord to return the remaining \$450.00 and I grant the Tenant a monetary Order in this amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: July 22, 2013

Residential Tenancy Branch