Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord testified that she mailed a copy of the Application for Dispute Resolution by registered mail addressed to the Tenant on September 19, 2013. The tenant disputed this evidence and she produced a copy of the envelope which shows it was mailed on October 2, 2013. The landlord testified there must have been a problem with the post office. A search of the Canada Post tracking service indicates that the tenant's evidence was correct and that the package was given to Canada Post on October 2, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the landlord is entitled to a monetary order and if so how much?
b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On August 9, 2012 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2012 and end on August 31, 2013. The agreement further provided that unless earlier terminated in accordance with the provisions of the Agreement or with the expressed written consent of the landlord the agreement shall end on August 31, 2013 and no notice shall be required for either the Landlord or Tenant to terminate the tenancy at the end of the fixed term. The agreement states that the Agreement shall be subject to the Residential Tenancies Act of the Province of Alberta. This provision is void as the B.C. Residential Tenancy Act governs the tenancy.

The tenancy agreement provided the rent was $1350 per month. The tenant paid a security deposit of $750 at the start of the tenancy (which is $75 more than what is permitted under the British Columbia Residential Tenancy Act).

On July 24, 2013 the landlord e-mailed the tenant asking when she would like to end the lease and requesting the tenant's permission giving the landlord access to look at a repair issue in the rental unit.

The tenant responded on that day asking whether it would be possible to extend for the month of September and possibly longer. It states I will know next month whether I will be extending longer. The landlord responded saying it was ok to extend till end of September. The tenant did not respond to confirm that she was agreeing to extend it to the end of September only.

On July 29, 2013 with the permission of the tenant the landlord conducted an inspection of the rental unit and was dissatisfied about the condition of the rental unit. On July 31, 2013 the landlord e-mailed the tenant expressing her concerns about the condition of the rental unit, agreeing to extend to September 30, 2013, stating that the lease would end on that date and asking for the Tenant's written notice as to the lease end date so that she could advertise.

The tenant was away on holidays and did not receive the landlord's e-mail until August 5, 2013. On that day the tenant responded by e-mailed stating that it was her understanding that they were going into a month to month after September and that if she was not able to stay past the end of September she would need to end the lease at the end of August.

On August 6, 2013 the landlord responded by e-mail stating "If you are leaving town on August 30, 2013, we should end the lease then. Should I come over on August 29 or 30 or any time convenient to you to do the takeover?

The tenant testified that upon receiving the August 6, 2013 e-mailed she found alternative accommodation and paid a security deposit for her new place.

On August 9, 2013 the landlord e-mailed the tenant stating the tenant had given her short notice and that the tenant would be responsible for the rent for September if the landlord was not able to rent it.

Later, in August the tenant e-mailed the landlord asking whether she was intending to advertise the rental unit. The landlord responded saying it was being advertised by word of mouth.

The tenant was initially going to do an inspection on the last Friday of the month with the building manager being present. She was unable to do so. She met the landlord on the Saturday and returned the keys. The landlord was going on a two week cruise and the meeting was short. The parties did not conduct an inspection at the start or at the end of the tenancy.

The landlord returned the security deposit to the tenant on September 19, 2013. On August 31, 2013 in the evening the tenant e-mailed a forwarding address to the landlord providing a Calgary address as her forwarding address. The landlord had already left

on her cruise by this time. The landlord returned on September 14, 2013. The tenant subsequently gave the landlord a Surrey forwarding address.

The landlord hired an agent to attempt to rent the rental unit. The agent showed the property but was not successful in renting it. He determined that he had a better opportunity to rent the premises if the premises were cleaned. He cleaned the rental unit and charged the landlord $328.78 (which included $270 in labor @$15 per hour for $18 hours).

Analysis:

With respect to each of the landlord's claims I find as follows:

a. The Residential Tenancy Act provides that a tenancy can come to an end in a number of ways including where the tenant gives a clear month notice or by mutual consent of the parties. It also provides that where there is a fixed term tenancy the parties can elect that the tenancy will come to an end at the end of the fixed term or they can continue on a month to month basis. The tenancy agreement provided that the tenancy would end on August 31, 2013 with no further notice needed by the parties.

I determined that the parties never agreed to the extension of the term to September. The tenant asked that it be extended to September 30 and possibly longer. The landlord agreed to September 30. However, at all material times the tenant was operating on the understanding that any extension would be on a month to month basis. The e-mail of the landlord dated July 31, 2013 requested that the tenant give the landlord written notice as to the end date. That e-mail indicates the landlord required the tenant to agree in writing before the extension would be binding.

On August 5, 2013 the tenant clarified any misunderstanding between the parties when she e-mailed the landlord stating that it was her

understanding the tenancy would continue on a month to month basis and if that was not possible she would need to end the tenancy on August 31, 2013. The landlord's e-mail on August 6, 2013 confirms the landlord was agreeing to end the tenancy on August 31, 2013. The tenant relied on this statement and found alternative accommodation (and paying a security deposit at her new place). In my view this amounts to a mutual agreement in writing to end the tenancy on August 31, 2013. It was not until August 9, 2013 that the landlord e-mailed the tenant stating she was holding the tenant responsible to pay the rent for September if the rental unit was not rented by that time. In my viewed the principle of estoppel applies and the landlord cannot avoid her agreement to end the tenancy on August 31, 2013 as the tenant has relied on the landlord's representations.

Finally, the landlord has acknowledged she did not advertise and attempted to rent the premises by word of mouth only. I determined the landlord failed to mitigate her loss by acting reasonably to re-rent the premises. As a result I dismissed the landlord's claim for loss of rent for September.

b. The landlord claims the sum of $750 for scratches to the laminate flooring. The landlord testified that the tenant kept a pet which was not permitted by the tenancy agreement and the pet caused the damage to the floor. The landlord alleged she is entitled to $750 for this claim as this is the amount she would charge as a pet damage deposit had she known the tenant had a pet. I determined this is a flawed way of assessing damages. In order to be entitled to compensation the landlord must prove the landlord caused the loss and she must prove the quantum of her loss.

The landlord has failed to prove that the tenant has caused the loss. The tenant denies having a pet of her own although she acknowledges that she kept a pet on behalf of an ex-boyfriend from time to time. The tenant

denies the pet caused scratches to the floor. She testified scratches were present when she took possession. However, because the landlord failed to conduct a condition inspection at the start of the tenancy she is unable to prove this. She also submitted that some the scratches were caused by the furniture left in the rental unit by the landlord.

I determined the landlord failed to prove the pet caused the damage to the floor. The landlord has the burden of proof. The tenant's explanation of the scratches pre-existing is equally plausible as the landlord's allegation that the damage was caused by the pet.

Further, the landlord has failed to prove the quantum of the damage. The landlord has not made repairs and failed to produce photographs or other similar evidence to establish this claim. The landlord failed to produce a quotation as to how much it would cost to make the repairs. Accordingly, I dismissed this claim.

c. The landlord claimed the sum of $328.78 for the cost of cleaning including materials and labor. The labor component of this claim was $270 based on 18 hours of labor multiplied by $15 an hour. The landlord relies on the invoice in the sum of $270 she received from her agent plus bills for cleaning materials. The landlord testified the agent decided to clean the rental unit because he was not able to re-rent it in its present condition.

The tenant disputes this claim. She testified that she sufficiently cleaned the rental unit and that she left the rental unit in a better condition than when she took possession. In addition she testified the amount claimed was inflated. She talked to a cleaning company that would have charged a flat rate of $200.

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

I determined the tenant failed to sufficiently clean the rental unit to the standard required by the Residential Tenancy Act. The landlord viewed the rental property at the end of August. I accept the submission of the landlord that cleaning was necessary to bring it to the standard required by the Act and to enable the rental of the rental unit. However, I determine the amount claimed is not supported by evidence and is unreasonable. In the circumstances I determined the landlord is entitled to $150 of this claim.

d. The landlord claimed the sum of $20 for postage and parking. This claim relates to the costs of litigation (the registered mail letter and cost of attending the office of the Residential Tenancy Branch). The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee. As a result I dismissed the claim for postage and parking.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of $150 plus the $50 filing fee for a total of $200.

The parties presented evidence relating to whether the landlord returned the security deposit within 15 days of receiving the tenant's forwarding address in writing. The landlord has returned all of the security deposit. I determined it was not appropriate for me to make an order for doubling of the security deposit as the tenant has not filed an Application for Dispute Resolution. Further, the tenant provided the landlord with two forwarding addresses. The first address was sent by e-mail dated on August 31, 2013 at 8:06 p.m. It is unclear when the landlord received this e-mail as she had left on a two week cruise earlier that day. The tenant provided the landlord with a second forwarding address after the landlord when the landlord returned on September 15, 2013 and the second address is the one the parties have used. I determined it was not appropriate to make an order relating to the doubling of the security deposit in this proceeding as the tenant has not filed a claim to receive double the security deposit, the entire security deposit has been returned to the tenant, it is unclear when the landlord received the tenant's first forwarding address (became aware of it, not just sent to the e-mail address of the landlord) and what effect if any should the provision of a second forwarding address have.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: October 23, 2013

Residential Tenancy Branch