



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 12, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that the Tenant entered into a written tenancy agreement on July 15, 2013, as provided in evidence, and paid her \$500.00 cash which was \$450.00 for the security deposit and \$50.00 for the non refundable Strata move in fee. After signing the documents the Tenant requested that the Landlord have the bedroom re-painted and requested that her current tenants move out early, either on the 30th or the 31st.

The Landlord stated that she sensed the Tenant was second guessing signing the agreement so she contacted her the next day and told her that if she did not want to proceed she needed to tell her now because she still had another person interested in renting the unit. The Tenant kept telling her that she wanted the unit. She reminded the

Tenant that the start date of the agreement is August 1, 2013. It was not until a text message conversation on July 25th, 2013, that the Tenant clearly stated that she wanted to cancel the agreement. The Landlord said she lost the other prospective tenant so she advertised the unit immediately and was not able to re-rent it until September 1, 2013. She is seeking to recover the lost rent for August 2013.

The Tenant testified and confirmed she signed the tenancy agreement on July 15, 2013, for a tenancy that was to begin on August 1, 2013. She said that she had told the landlord over the phone that she was not going to take the unit, prior to her text message on July 25, 2013. She indicated that the Landlord told her she needed her new address to return the security deposit so she sent the address by registered mail on August 7, 2013; but the Landlord did not return her money.

In closing, the Landlord confirmed she received the Tenant's forwarding address on August 12, 2013 and she was not required to pay the Strata move in fee so she is still holding the full \$500.00 in trust.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Common law provides that a contract or written agreement, such as a tenancy agreement, is in full force and effect if: (1) the parties have capacity to enter into an agreement; (2) the parties reached consensus on the terms; and (3) compensation is provided.

In this case the undisputed evidence was the parties signed a written tenancy agreement, agreeing to the terms which indicate the tenancy will begin on August 1, 2013 and continue for a fixed term ended February 1, 2014. The Tenant provided the Landlord compensation in the amount of \$500.00. Based on the foregoing, I find the parties had capacity, agreed upon the terms as indicated by the signed agreement, and compensation was provided by the Tenant. Therefore, this tenancy agreement was in full force and effect.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing one months notice to end tenancy on a date that is effective no earlier than the end of the fixed term.

The evidence supports the Tenant breached Section 45 of the Act by ending her tenancy without proper notice and prior to the end of the fixed term which was February 1, 2014. This breached caused the Landlord to suffer a loss of August 2013 rent. According, I find the Landlord has met the burden of proof and I award her loss of August 2013 rent in the amount of **\$900.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit and move in fee plus interest as follows:

Loss of Rent August 2013	\$900.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$950.00
LESS: Strata move in fee \$50.00	-50.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$450.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$450.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not 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: November 21, 2013

Residential Tenancy Branch

