



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF, O

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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and for "other".

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.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were first sent to the rental unit, via registered mail, on August 30, 2013. He stated that those documents were returned by Canada Post.

The Agent for the Landlord stated that on November 27, 2013 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were mailed to a forwarding address provided by the Tenant. The documents the Landlord served were reviewed with the Tenant at the hearing, who acknowledged receipt of all the documents. As the Tenant acknowledged receipt of the Landlord's evidence, it was accepted as evidence for these proceedings.

The Tenant stated that on December 03, 2013 documents the Tenant wishes to rely upon as evidence were faxed to the Landlord. The documents the Tenant served were reviewed with the Agent for the Landlord at the hearing, who acknowledged receipt of all the documents. As the Agent for the Landlord acknowledged receipt of the Tenant's evidence, it was accepted as evidence for these proceedings.

Preliminary Matter

The Landlord was advised that the application for compensation for painting and cleaning the rental unit was being refused, pursuant to section 59(5)(a) of the

Residential Tenancy Act (Act), because the Application for Dispute Resolution did not provide sufficient particulars of this claim for compensation, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of any reference to a claim for cleaning or painting on the Application for Dispute Resolution.

Although cleaning and painting is listed on one of the seven Monetary Order Worksheets, it is not listed on the other six worksheets. I find the worksheets submitted are contradictory and could be confusing. I find it entirely possible that the Tenant did not understand that a claim for cleaning and painting would be considered at this hearing. In reaching this conclusion I was influenced, in part, by the Tenant's statement that she was not prepared to respond to the claim for cleaning/painting.

I find that proceeding with the Landlord's claim for cleaning/painting at this hearing would be prejudicial to the Tenant. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for cleaning and painting.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue and to retain all or part of the security deposit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that names the Landlord, the Tenant, and the male Respondent, although it is only signed by the Landlord and the Tenant. The tenancy agreement indicates that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on March 01, 2013, the fixed term of which was to end on February 28, 2014. The tenancy agreement requires the Tenant to pay monthly rent of \$3,800.00 by the first day of each month.

The male Respondent stated that although he periodically resided in the rental unit he did not sign the tenancy agreement nor did he enter into a verbal agreement to pay monthly rent. The Agent for the Landlord argued that the parties had a verbal agreement that the male would be living in the rental unit and that he would be paying the rent outlined in the tenancy agreement.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$1,900.00; that on August 24, 2013 the Tenant sent the Landlord an email, in which the Tenant stated that she was ending the tenancy on October 01, 2013; that in the email of August 24, 2013 the Tenant informed the Landlord that they will be "moving before this date so you can rent out the house for September 1st if you choose"; and that the Tenant provided the Landlord with a forwarding address, via email, on October 18, 2013.

The Tenant stated that the rental unit was vacated on August 29, 2013 and that a forwarding address was left inside the rental unit on that date. The Agent for the Landlord stated that the rental unit was vacated "sometime in August" and that the forwarding address allegedly left in the rental unit in August was not located by the Landlord or her agent(s). The Agent for the Landlord #2 stated that he confirmed the rental unit was vacated on September 02, 2013 when he went to the rental unit.

The Agent for the Landlord stated that the rental unit was advertised on three popular websites at the beginning of October of 2013; that the rental unit was not advertised prior to the start of the October because the notice to end tenancy ended the tenancy on October 01, 2013; that the Landlord asked for a letter confirming that the rental unit could be re-rented; and that the Tenant did not provide the requested written confirmation.

The male Respondent stated that he regularly searched one of the popular websites on which the rental unit was advertised, and he did not locate an advertisement for the unit until sometime near the middle of October of 2013.

The Landlord and the Tenant agree that the Landlord was advertising the rental unit for \$4,000.00 per month. The Agent for the Landlord stated that the monthly rent was increased because the Landlord believed that a new tenant could afford to pay this amount for the unit.

The Landlord and the Tenant agree that the Tenant paid \$1,900.00 in rent for September of 2013. The Landlord stated that the rental unit is still not rented. The Landlord is seeking lost revenue/rent for the remainder of September, for October, for November, and for December.

Analysis

On the basis of the written tenancy agreement, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement that began on March 01, 2013, the fixed term of which was to end on February 28, 2014, which required the Tenant to pay monthly rent of \$3,800.00 by the first day of each month.

The undisputed evidence is that the Landlord and the male Respondent did not enter into a written tenancy agreement. I find that I have insufficient evidence to conclude that the Landlord and the male Respondent entered into a verbal tenancy agreement. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's position that the Landlord had a verbal tenancy agreement with the male Respondent or that refutes the male Respondent's testimony that he did not have a verbal tenancy agreement with the Landlord. I note that the fact a party is residing in a rental unit is not, in and of itself, proof of tenancy. Many people live in rental units without tenancy agreements and are commonly referred to as "occupants". Occupants have neither the legal rights of a tenant nor the obligations of a tenant.

I note that it is the Landlord's obligation to create a written tenancy agreement that is signed by all parties. In the absence of a clear written agreement, the Landlord bears the burden of proving the male Respondent entered into a verbal tenancy agreement, as the Landlord is the party claiming compensation on the basis of that tenancy agreement. As the Landlord has failed to meet this burden of proof, I dismiss the Landlord's application for a monetary Order that names the male Respondent.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. The email the Tenant sent to the Landlord on August 24, 2013, in which the Tenant stated that she was ending the tenancy on October 01, 2013, did not serve to end this tenancy, as the Tenant did not have the right to end this tenancy, pursuant to section 45(2) of the *Act*, until the end of the fixed term of the tenancy.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends when the tenant vacates or abandons the rental unit. On the basis of the testimony of the Tenant and the Agent for the Landlord, I find that the rental unit was vacated prior to August 31, 2013. I therefore find that this tenancy had ended by August 31, 2013, pursuant to section 44(1)(d) of the *Act*, when the Tenant abandoned the rental unit. On the basis of the email dated August 24, 2013 and the fact that the Agent for the Landlord #2 determined that the rental unit was empty on September 02, 2013, I find that the Landlord knew, or should have known, that the rental unit was abandoned and that the Landlord had the right to re-rent the unit.

I find that it was reasonable for the Landlord not to advertise the rental unit until they had legal possession of the rental unit which, in these circumstances, was September 01, 2013. As it would have been difficult, if not impossible, to find advertise the rental unit in time to find new tenants for the period between September 01, 2013 and September 14, 2013, I find that the Landlord is entitled to compensation for lost revenue for this period, in the amount of \$1,900.00. As the Tenant has paid the Landlord \$1,900.00 for September of 2013, I find that the Landlord has been fully compensated for this period.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the loss of revenue the Landlord experienced after September 14, 2013.

I find that the Landlord should have advertised the rental unit as soon as the Landlord was certain it was vacant, which in these circumstances, was September 02, 2013. Had the Landlord advertised in a timelier manner, I find it possible that the Landlord would have found a new tenant for September 15, 2013, in which case the Landlord would not have suffered lost revenue after September 14, 2013.

More importantly, I find that the Landlord should have advertised the rental unit for no more than \$3,800.00 per month, which was the amount the Tenant was paying, rather than \$4,000.00 per month. Had the Landlord advertised the rental unit for less than \$4,000.00 per month, I find it possible that the Landlord would have found a new tenant for September 15, 2013, in which case the Landlord would not have suffered lost revenue after September 14, 2013. In these circumstances, I am unable to determine whether the rental unit remained vacant because there were no potential renters or because the rental unit was overpriced.

As I have determined that the Landlord did not properly mitigate its losses, I dismiss the Landlord's application for loss of revenue for any period after September 14, 2013.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish a monetary claim, I find that the \$1,900.00 security deposit must be returned to the Tenant. I therefore grant the Tenant a monetary Order for the amount \$1,900.00. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: December 09, 2013

Residential Tenancy Branch

