



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord personally served the Tenant with the Notice of Hearing documents and copies of his documentary at her place of business.

Preliminary Matter

At the outset of the Hearing, the Tenant advised that she had a witness that she would like to give testimony. She stated that he was an RCMP officer and would be able to give testimony if I called him. I asked her what testimony she expected the officer to provide. The Tenant stated that she had to move out of the rental unit because she was in personal danger and that the RCMP officer recommended that she leave.

I asked the Tenant if she was alleging that she was in fear of the Landlord, or if the Landlord had directly or indirectly caused her to fear for her safety. She replied that the Landlord had nothing to do with it and that it was a case of domestic abuse.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for the month of September, 2013?

Background and Evidence

This tenancy began on August 1, 2013. It was a one year term lease to July 31, 2013. Monthly rent was \$1,000.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy.

On August 28, 2013, the Tenant gave the Landlord verbal testimony that she was ending the tenancy effective August 31, 2013.

The Landlord stated that he was surprised that she was leaving. He said that he first told him that she had a promotion and had to move to another City. Then, she said she was having problems with her boyfriend.

The Landlord testified that he was able to re-rent the rental unit for \$1,000.00 a month effective October 1, 2013.

The Landlord stated that he told the Tenant on August 29, 2013, that he agreed to keep the security deposit towards partial payment of rent for September, but that he would need \$500.00 for the remainder of the month's rent.

The Tenant stated that she had no choice but to end the tenancy because of she was in danger.

Analysis

I explained to the Tenant that her witness's (the RCMP Officer's) testimony would not be required because it is irrelevant to the Landlord's application. I accept the Tenant's explanation for moving out of the rental unit; however, the Act is clear about how and when tenancies end. Part 44 of the Act states:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

- (b) 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;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

[my emphasis added]

Section 45 (Tenant's notice) states:

45 (1) A tenant may end a periodic 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, and
- (b) 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.

(2) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In this set of circumstances, I find that the Tenant did not end the tenancy in accordance with the provisions of Section 45 of the Act, nor did she give notice that complied with the requirements of Section 52 of the Act.

I find that the Tenant did not comply with the Act and that her failure to comply with the Act caused the Landlord to lose revenue for the month of September, 2013. Therefore, I allow the Landlord's application. The Landlord may apply the security deposit towards loss of revenue for the month of September, 2013.

The Landlord's application had merit and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$550.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 03, 2014

Residential Tenancy Branch

