



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on January 12, 2013 for a 3 month and 1 day fixed term tenancy beginning on February 1, 2013 that converted to a month to month tenancy beginning on May 2, 2013 for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid.

The parties both submitted copies of email correspondence relating to the tenant's notice to end tenancy beginning with an email from the tenant to the landlord dated October 21, 2013 stating that he had been looking for a new place to live because with a new tenant moving into the basement unit without any agreement yet on how hydro and gas would be paid to him (utilities were in his name) he no longer wished to live there.

The email went on to say: "I want to know if you would have any objections to me paying half a month rent for November and be out by the 15th". The landlord responded by email on October 22, 2013 stating that tenant would not be in compliance with the tenancy agreement requirements for notice to end the tenancy if he moved out on November 15, 2014. The response goes on to say that he would be compliant if he ended the tenancy on November 30.

The landlord did commit in that response to meet with the tenant on November 15 complete a walk through and if the unit was satisfactory they would return the deposit.

The tenant submits that he relied upon the landlord's statement of meeting him on the 15th and returning his deposits if the unit was satisfactory as agreement by the landlord that he could move out on the 15th and pay only ½ month's rent. The landlord acknowledges the tenant did provide payment in the amount of \$500.00 for the month of November.

The tenant submits that the landlord did not issue him a notice to end tenancy when he only gave her \$500.00 prior to the start of November and that she cashed the cheque for that amount. He states that the first time he knew that the landlord was not accepting his proposition was when she refused to return the deposit at the move out inspection.

The tenant also submits that he took photographs of the landlord's son moving into the rental unit a day or two after he moved out. He states that as such the landlord did not suffer any loss because her son would have paid her rent for the balance of the month of November 2014.

The landlord testified she had been unsure whether or not the tenant was moving out because he had not responded to their email of October 22, 2013 with a written notice of his intention to vacate in accordance with the tenancy agreement requirements but because her son had to provide notice to his previous landlord she did enter into an agreement with her son to rent the unit effective December 1, 2013.

The landlord submits that she had given permission for her son to move some items in prior to the start of December 2013 and that he had attended the property on several occasions to prepare the unit and property for their rental beginning in December.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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. A material term is defined as a term in a tenancy agreement that is so important to both parties that a single breach of the term would be sufficient to end the tenancy.

“A Guide for Landlords & Tenants in British Columbia” published by the Residential Tenancy Branch page 31 states that if a landlord has breached a material term of the tenancy the tenant could decide to end the tenancy without giving full notice. The procedure for this is outlined as follows:

Before the end of the tenancy, the tenant must:

1. Provide the landlord written notice of the decision to end the tenancy indicating the breach;
2. Give a reasonable time for the landlord to correct the problems; if need be, submit an Application for Dispute Resolution. The landlord may also submit an Application for Dispute Resolution seeking to set aside the tenant's notice. An arbitrator may decide in the landlord's favour if the term was not material; the breach was not serious enough to end the tenancy; or the tenant did not exercise all available options beforehand.

While the tenant has identified that he was uncertain about how the payment of utilities was going to affect him when the previous basement tenant moved out I find that this issue was not a material term of the tenancy agreement. In fact, upon review of the tenancy agreement I find that the payment of utilities is not a term of the tenancy agreement at all.

Even if I were to find that this was a material term of the tenancy agreement, I find that the notice provided by the tenant notifies the landlord of what the problem is but it does not provide the landlord with any opportunity to correct the breach. The notice is clear that the tenant intends to move out of the rental unit.

As such, I find the tenant did not provide a notice to end tenancy that was compliant with either Section 45(1) or Section 45(3) and as such the tenant is responsible for the payment of rent for the full month of November 2013 subject only to the landlord's obligation to mitigate any losses.

I also find, based on the landlord's undisputed testimony, the landlord entered into a new tenancy agreement with a new tenant (her son) that was to begin on December 1, 2014. I find that it is reasonable and common practice for landlord's to allow new tenants to move items into rental units prior to the start of a tenancy if the unit is vacant. I also find, based on the landlord's undisputed testimony that she received no rent for this period.

I find that is reasonable for a landlord to enter a tenancy agreement with new tenants, regardless of any familial connection, to begin a new tenancy at the start of a month. I also accept that a tenant moving to a new location would have to provide their existing landlord a 1 month notice of their intent to do so.

I accept, as reasonable, that there was uncertainty on the part of both the landlord and tenant in this case as to when the tenancy was actually going to end. As such, I find the landlord did take reasonable steps to re-rent the unit as soon as possible and satisfy her requirement to mitigate her losses.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$550.00** comprised of \$500.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 13, 2014

Residential Tenancy Branch

