



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPR, OPB, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for:

- an Order of Possession for cause
- an Order of Possession for unpaid rent
- an Order of Possession because the tenant has breached an agreement with the landlord
- a monetary Order for money owed or compensation for damage or loss
- a monetary Order for unpaid rent or utilities
- to keep all or part of the security deposit
- to recover the fee for filing this Application for Dispute Resolution.

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 Tenant submitted documents to the Residential Tenancy Branch on April 09, 2014. The Tenant stated that she mailed copies of these documents to the Landlord on April 09, 2014. The Landlord acknowledged receiving those documents on April 12, 2014 and they were accepted as evidence for these proceedings.

The Landlord stated that she submitted documents to the Residential Tenancy Branch on May 08, 2014. The Landlord stated that she did not serve copies of these documents to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for liquidated damages; for compensation for unpaid utilities; and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement that began in July of 2013, the fixed term of which was to end on June 30, 2014. A copy of the tenancy agreement was not in evidence at these proceedings.

The Landlord and the Tenant agree that the tenancy agreement required the Tenant to pay monthly rent of \$800.00 and that the Tenant paid a security deposit of \$400.00. The Landlord contends that the rent was due, in advance, by the first day of each month. The Tenant contends that the rent was due, in advance, by the last day of the previous month.

The Landlord and the Tenant agree that the Tenant vacated the rental unit on January 13, 2014. The parties agree that the Tenant has not yet provided the Landlord with a forwarding address, in writing, although she did provide one during the hearing. The Tenant stated that the Landlord had her work address. The Landlord stated that she was able to obtain a work address for the Tenant.

The Landlord and the Tenant agree that on December 31, 2013 the Tenant informed the Landlord, via email, that she intended to end the tenancy on January 15, 2014. The parties agree that no rent was paid for January and the Landlord is seeking compensation for unpaid rent for that month, in the amount of \$800.00.

The Landlord is seeking compensation for lost revenue, in the amount of \$1,600.00, for the months of February and March of 2014. The Landlord stated that she is not seeking compensation for lost revenue for the remainder of the fixed term of the tenancy agreement, as the rental unit was sold on April 02, 2014.

The Landlord stated that she began advertising the rental unit on three popular websites within a day or two of receiving the Tenant's notice to end the tenancy and that she regularly updated those advertisements. She stated that she did get some responses to her advertisements but she did not believe those parties would make suitable tenants and she therefore elected not to rent to those parties. She stated that she believes she had some difficulty finding a new tenant as the rental unit was being advertised for sale and she was unable to find a tenant that was willing to accept a "short term lease".

The Landlord and the Tenant agree that the Tenant informed the Landlord that she would like to sublet the rental unit and the Landlord told her she could not sublet the unit. The Landlord stated that she did not feel comfortable allowing the Tenant to sublet the rental unit as she is young and inexperienced in these matters.

The Landlord and the Tenant agree that the Tenant informed the Landlord that she would like to help the Landlord identify a new tenant and the Landlord told her that she did not want her assistance. The Tenant stated that she had a male who was willing to sublet the rental unit, although she did not provide his name to the Landlord because the Landlord told her that she wished to find her own tenant. She submitted a letter

from this male, which corroborates that he was interested in subletting or leasing this rental unit.

The Landlord is seeking \$250.00 in liquidated damages. The Landlord stated that there is a term in the tenancy agreement that specifies the Tenant must pay liquidated damages of \$250.00 if the tenancy is ended prior to the end of the fixed term. The Tenant stated that she does not have a copy of the tenancy agreement and she does not recall this specific term.

The Landlord and the Tenant agree that the Tenant was required to pay for electricity used during the tenancy. The Landlord stated that hydro costs from the latter portion of the tenancy remain unpaid, although she was unable to declare the specific amount due. The Tenant stated that she has paid her hydro charges in full for the entire time she occupied the rental unit.

The Landlord is claiming \$675.00 for an "estimated electric bill". She stated that this claim was based on her estimate that hydro costs for the remaining time in the fixed term would be \$150.00 per month. When she was advised that \$150.00 for the final 5 months of the tenancy would be more than \$675.00 she stated that she must have made a mathematical error.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on June 30, 2014. On the basis of the undisputed evidence, I find that the rent was due, in advance, no later than the first day of each month.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*. In reaching this conclusion, I note that a Tenant cannot end a tenancy in accordance with section 45 of the *Act* on a date that is earlier than the end of the fixed term of the tenancy agreement.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if 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. As the fixed term of this tenancy agreement has not yet expired, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the rental unit on January 13, 2014.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenant had not ended the tenancy in accordance with the legislation prior to January 01, 2014, I find that she was obligated to pay rent for January of 2014. I therefore find that she owes the Landlord \$800.00 in rent for January.

I find that the Tenant failed to 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. I find that the Landlord did experience a loss of revenue as a result of the premature end to this fixed term tenancy.

Section 7(2) of the *Act* requires a landlord who claims compensation for lost revenue to do whatever is reasonable to minimize their loss. While I find that the Landlord attempted to mitigate her losses by advertising the rental unit in a reasonable and timely manner, I find that the Landlord did not pursue all reasonable methods of finding a new tenant. I therefore dismiss her claim for compensation for lost revenue for February and March of 2014.

Section 34(1) of the *Act* stipulates that a tenant must not sublet a rental unit unless the landlord consents in writing. Section 34(2) of the *Act* prohibits a landlord from unreasonably withholding consent to sublet a rental unit if a fixed term tenancy agreement is for more than six months.

While I accept that the Landlord may not have approved of the person the Tenant found to sublet the rental unit, I find that it would have been reasonable to at least consider a potential sublet situation. I find it entirely possible that the Tenant could have found a suitable person to sublet the unit, regardless of her youth and inexperience. I find that the Landlord's blanket refusal to allow the Tenant to sublet was unreasonable and that it may have contributed to the lost revenue she experienced. In my view, the Landlord should have informed the Tenant that she would consider a sublet providing she approved of the potential occupant.

Similarly, I find that the Landlord's blanket refusal to allow the Tenant to help locate a new tenant was unreasonable and that the Tenant may have been able to identify a suitable new tenant. I find that the Landlord's blanket refusal to allow the Tenant to help identify a new tenant was unreasonable and that it may have contributed to the lost revenue she experienced. In my view, the Landlord should have encouraged the Tenant to bring potential tenants to her attention, with the understanding that the Landlord would determine if they were suitable tenants.

There is a general legal principle that places the burden of proving a fact on the person who is relying on the fact. In these circumstances, the burden of proving there is a term in the tenancy agreement that requires the Tenant to pay liquidated damages rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show the term exists. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as a copy of the tenancy agreement, that corroborates the Landlord's statement that that the term is in the agreement. I was also strongly influenced by the testimony of the Tenant, who stated that she does not recall the term and she does not have a copy of the tenancy agreement to refer to. On this basis, I dismiss the Landlord's application for liquidated damages.

On the basis of the undisputed evidence, I find that the Tenant was required to pay for hydro consumed during the tenancy. I find that the Landlord has submitted insufficient evidence to show the Tenant has not paid for all of the hydro consumed while she occupied the rental unit. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as a copy of an unpaid hydro bill, that corroborates the Landlord's statement that some money is owed or that refutes the Tenant's statement that all of the hydro bills have been paid in full. I therefore dismiss the Landlord's application for hydro costs for any period prior to January 13, 2014.

In determining the claim for hydro, I was further influenced by the Landlord's inability to specify an exact amount owed for any period prior to January 13, 2014. Even if I did determine that some money was owed for this period, I would be unable to award compensation as I would be unable to determine how much was owed.

I also dismiss the Landlord's claim for compensation for hydro for the period between January 14, 2014 and April 02, 2014. The Tenant agreed to pay for hydro consumed during the tenancy. As the Tenant did not occupy the rental unit after January 13, 2014, it is reasonable to conclude that she did not consume any hydro during this period.

In some circumstances I would conclude that a Tenant was required to pay for a small amount of hydro consumption after prematurely ending a fixed term tenancy if, for example, the heat needed to be left on to prevent pipes from freezing during the winter. I would expect this bill to be very minimal, certainly far less than the \$150.00 per month claimed by the Landlord. In these circumstances, however, I find that I simply have insufficient evidence to determine how much hydro was consumed in the rental unit during January, February, and March, as the Landlord has submitted no bills to support

this claim nor did she testify about the amounts of those bills. In the absence of evidence to show how much hydro was used to preserve the integrity of the rental unit during January, February, and March, I cannot determine, with any reasonable degree of accuracy, how much the Tenant should pay for these months. I therefore dismiss the application for hydro costs for any period after January 13, 2014.

I find that the Landlord's application has some merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$900.00, which is comprised of \$800.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$400.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$500.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: May 13, 2014

Residential Tenancy Branch

