



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, FF

Introduction:

This hearing was convened in response to cross applications.

On January 31, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit. The Tenant stated that on, or about, February 04, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 19, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to retain the security deposit, and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that on, or about, February 21, 2014 the Application for Dispute Resolution and the Notice of Hearing were posted on the Tenant's door. The Tenant acknowledged receipt of these documents.

The Landlord stated that she submitted documents to the Residential Tenancy Branch on April 24, 2014, although I did not have copies of those documents with me at the time of these proceedings. The Landlord stated that copies of these documents were posted on the Tenant's door on April 28, 2014. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Landlord indicated that she was willing to proceed with the hearing even though I was unable to view her evidence, with the understanding that the matter would be adjourned if it became apparent that it was necessary for me to view the documents. The hearing was concluded without either party requesting an adjournment.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for unpaid rent and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that the parties entered into a written tenancy agreement for a tenancy that was to begin on January 15, 2014. The parties agree that the tenancy agreement required the Tenant to pay monthly rent of \$1,250.00 by the first day of each month and that a security deposit of \$625.00 was paid to the Landlord.

The Landlord and the Tenant agree that when the Tenant arrived at the rental unit on January 13, 2014 he was unable to move his property into the rental unit as there had been a heavy snowfall that was not yet cleared from the driveway.

The Tenant stated that upon viewing the property he determined that he did not wish to move into the rental unit for the following reasons:

- The basement was wet, although the Landlord had previously informed him the basement was always dry
- The Landlord still had personal property stored in an outbuilding which the Tenant intended to use to store his tools and the Landlord wished to leave some of her property in the outbuilding
- The Landlord suggested he store his tools under a veranda area, which was damp and unsuitable for storage
- There were high tension, high voltage lines above the house and when they had previously discussed these lines the Landlord told him she did not know if they were high tension, high voltage lines, but she knew they supplied power to local houses.

The Landlord and the Tenant agree that on January 13, 2014 the Tenant informed the Landlord that he did not wish to move into the rental unit, although he never informed the Landlord of that decision in writing. The parties agree that the Tenant was never provided with keys to the rental unit and he never moved into the rental unit.

The Landlord and the Tenant agree that the Tenant paid no rent for this rental unit. The Landlord is seeking compensation for unpaid rent for the period between January 15, 2014 and February 28, 2014, in the amount of \$1,875.00.

The Landlord stated that she did not advertise the rental unit until February 15, 2014 and that she was able to find a new tenant for March 01, 2014.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit and that the Landlord did not return any portion of the security deposit. The parties also agree that the Tenant did not provide the Landlord with a forwarding address until he mailed his Application for Dispute Resolution on, or about, February 04, 2014.

Analysis:

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement that was to begin on January 15, 2014, for which the Tenant was to pay \$1,250.00 per month. As the Tenant entered into a tenancy agreement with the Landlord, I find that he was obligated to end this tenancy in compliance with section 45 of the *Residential Tenancy Act (Act)*.

Section 45(1) of the *Act* stipulates that a tenant may end a periodic tenancy by providing the

landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

Section 45(3) of the *Act* stipulates that 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.

As the Tenant did not provide the Landlord with written notice of his intent to end the tenancy in accordance with section 45 of the *Act*, I find that he was obligated to pay rent when it was due on January 15, 2014. I therefore find that the Tenant owes the Landlord rent, in the amount of \$625.00, for the period between January 15, 2014 and January 31, 2014.

In determining this matter I was influenced, in part, by section 26 of the *Act* which stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. This section requires a tenant to pay rent when it is due even if there are deficiencies with the rental unit.

I note that if a landlord provides a tenant with a substandard rental unit or a rental unit that does not provide all the facilities/services required by the tenancy agreement or the *Act*, a tenant has the right to file an Application for Dispute Resolution claiming compensation for any deficiencies and lack of services.

I find that this tenancy ended on January 15, 2014, in accordance with section 44(1)(d) of the *Act*, when the Tenant abandoned the rental unit. I find that it would be reasonable for the Landlord to conclude that the tenancy would not continue when the Landlord verbally informed the Landlord of that on January 13, 2014; when he did not pay rent that was due on January 15, 2014; and when no keys to the rental unit were provided. In spite of the fact the Tenant did not provide the Landlord with written notice of his intent to end the tenancy, I find that the Landlord knew, or should have known, that the Tenant did not intend to move into the rental unit on, or after, January 15, 2014. I note that I do not find that this tenancy ended in accordance with section 44(1)(e) of the *Act* as I do not find that the tenancy was frustrated. A tenancy agreement is "frustrated" where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Even if snow prevented the Tenant from moving into the premises two days prior to the official start date of the tenancy, I find that it is highly likely that situation would have been remedied by the official start date of the tenancy. While I find that other alleged deficiencies with the rental unit may have been material terms of the tenancy, they were simply not serious enough to consider the tenancy frustrated.

Section 7(2) of the *Act* requires a landlord who is seeking compensation for unpaid rent/lost revenue must do whatever is reasonable to mitigate their loss. This includes advertising the rental unit in a reasonable and timely manner as soon as they realize the tenancy has ended. As the Landlord knew, or should have known, that the tenancy ended on January 15, 2014 and the Landlord did not make any attempt to find a new tenant until February 15, 2014, I find that the Landlord did not make a reasonable effort to mitigate the loss. Had the Landlord advertised the unit on January 16, 2014, I find it quite possible that the Landlord would have located a new tenant for February 01, 2014. I therefore find that the Landlord is not entitled to any compensation for unpaid rent/lost revenue for any period after January 31, 2014.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. As the Tenant mailed his forwarding address to the Landlord on, or about, February 04, 2014 and the Landlord filed an Application for Dispute Resolution on February 19, 2014, I find that the Landlord complied with section 38(1) of the *Act*.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application or Dispute Resolution.

Conclusion:

The Landlord has established a monetary claim of \$675.00, which is comprised of \$625.00 in unpaid rent and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

As the Landlord has established a monetary claim, I dismiss the Tenant's claim to recover the security deposit. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit in partial satisfaction of this monetary claim.

On the basis of these calculations, I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not voluntarily 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 15, 2014

Residential Tenancy Branch