



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to recover double his security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on July 24, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, however those items were subsequently returned to him by Canada Post. The Landlord stated that sometime in early August of 2014 he personally served the Tenant with the Application for Dispute Resolution and the Notice of Hearing. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on January 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the Landlord. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The Landlord stated that he is representing the female Landlord at the proceedings.

On January 19, 2015 the Landlord submitted additional documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were personally served to the Tenant on January 18, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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. Neither party was permitted to present evidence regarding the condition of the rental unit at the end of the tenancy, as that issue was not a subject of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2013 and that the parties agreed that it would be a fixed term tenancy, the fixed term of which would end on July 31, 2014. The parties agree that they signed a written tenancy agreement, which was submitted in evidence.

The Landlord stated that when they signed the tenancy agreement he understood that the tenancy would continue on a month to month basis at the end of the fixed term of the tenancy. He stated that in addition to their verbal communication he understood this because the section 2(b)(i) of the tenancy agreement is checked, which declares that at the end of the fixed term the tenancy may continue on a month-to-month basis or for another fixed length of time.

The Tenant stated that when they signed the tenancy agreement he understood that the Tenant would have to vacate the rental unit at the end of the fixed term. He stated that in addition to their verbal communication he understood this because the parties initialed the boxes adjacent to section 2(b)(ii) of the tenancy agreement, which declares that at the end of the fixed term the tenancy the Tenant must move out of the rental unit. Although the parties did not check section 2(b)(ii), the instructions direct the parties to initial the boxes if they "choose this option".

The Landlord and the Tenant agree that in June and July of 2014 they exchanged text messages about the possibility of continuing the tenancy. The Landlord initiated the communications by asking if the Tenant wished to the Tenant if they wanted "to sign another year" at the end of the lease. The Tenant indicated that the Tenant would like to continue the tenancy on a month to month basis at a reduced rate and the Landlord indicated that Landlord would like to enter into another fixed term tenancy at the same rate.

The Landlord and the Tenant did not reach an agreement regarding a continued tenancy and on July 14, 2014 the Tenant advised the Landlord, via text messaging, that they "will not be staying after the term of our lease, August 31 will be our last day.

The parties agree that on July 16, 2014 the Tenant sent a text message to the Landlord informing the Landlord that they had made a mistake and meant to state their last day would be July 31, 2014.

The Landlord and the Tenant agree that the rental unit was vacated by July 31, 2014.

The Landlord and the Tenant agree that:

- a security deposit of \$900.00 was paid
- that the Tenant delivered a forwarding address, in writing, to the Landlord's home on December 22, 2014
- that the Tenant did not authorize the Landlord to retain any portion of the security deposit
- that the Landlord did not return any portion of the security deposit

- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

I find that the written tenancy agreement prepared by the Landlord is unclear regarding the fixed term tenancy. Section 2(b)(i) of the tenancy agreement is checked, which declares that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time however the parties have initialed the boxes beside section 2(b)(ii), which are to be initialed if the Tenant must move out of the rental unit at the end of the fixed term.

In determining this matter I was guided by *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, in which the Court found that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies in these circumstances and that the tenancy agreement must be interpreted in the manner which favours the Tenant.

As the Tenant vacated the rental unit at the end of the fixed term of the tenancy as the Tenant contends he was required to do and the tenancy agreement is unclear on this issue, I find that the tenancy agreement must be interpreted to mean that the Tenant was required to vacate the unit at the end of the fixed term, which was July 31, 2014.

I find that the testimony of the parties does not serve to clarify the written tenancy agreement, as the parties gave contradictory testimony in this regard.

I find that the text messages submitted in evidence also do not serve to clarify the written tenancy agreement. On the basis of the messages sent, I find the Landlord could have understood that the tenancy was to continue on a month to month basis and he was simply trying to enter into another fixed term tenancy. Conversely, I find the messages could be interpreted to mean that the Tenant believed he was required to vacate the rental unit at the end of the fixed term and he was simply attempting to negotiate a new tenancy with reduced rent.

In determining this matter I have placed little weight on the text message sent on July 14, 2014. Although the Tenant states he intends to vacate the unit on August 31, 2014, he also states that he “will not be staying after the term of our lease”. Given that the fixed term of the tenancy ends on July 31, 2014, I find the text message is unclear. I find that the Tenant clarified the message on July 16, 2014, when he informed the Landlord that he meant to state the unit would be vacated on July 31, 2014.

As the tenancy agreement required the Tenant to vacate the rental unit on July 31, 2014, I find that the Tenant was not obligated to provide any notice of his intent to vacate the rental unit on that date. As the Tenant did vacate the rental unit by July 31, 2014, I find that the Landlord is not entitled to any compensation for any rent or lost revenue for August of 2014.

As the Landlord has failed to establish the merit of his claim, I dismiss his application to recover the cost of filing an Application for Dispute Resolution.

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, a landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

As the Tenant's claim has merit, I grant his application to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,850.00, which is double the security deposit plus \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for \$1,850.00. In the event the Landlord does not 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: January 27, 2015

Residential Tenancy Branch

