



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Five Mile Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession, a monetary Order for loss of rent revenue and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant confirmed receipt of the landlord's March 11, 2015 application that was sent via registered mail on March 12, 2015. The parties confirmed receipt of each other's' evidence.

The parties confirmed that the tenant vacated the rental unit on March 31, 2015; an Order of possession is not required.

The landlord withdrew the request for loss of rent revenue for April 2015.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for loss of March 31, 2015 rent?

Background and Evidence

The landlord provided a copy of a dispute resolution decision issued on March 4, 2015. The arbitrator made a number of findings. It was confirmed in the decision that the tenancy was linked to employment with the landlord and that the rental suite was provided to the tenant for the term of her employment. The unit was located in the building which the tenant managed. Reduced rent payments were found to be “inextricably linked” to the tenant’s salary; which was set out in the contract provided for the March 4, 2015 hearing and today’s hearing.

On March 4, 2015 the arbitrator upheld a 1 month Notice to end tenancy for an end of employment that had been served to the tenant on January 30, 2015. The Notice had an effective date of February 28, 2015. The tenant applied to cancel the Notice; the arbitrator found the Notice was of force and did not cancel the Notice. It is apparent that the landlord did not request an Order of possession during the hearing held on March 3, 2015. The landlord then submitted the current application.

In the current application the tenant was notified of the landlord’s intent to seek the loss of rent revenue at the present market rent of \$1,300.00. The employment contract signed by the parties, a copy of which was supplied as evidence, included the following clause five:

“you will occupy a one bedroom apartment (unit #) on a month-to-month tenancy, at a reduced rate of \$100.00 per month, with a market rent of \$1,100.00”

(Written as reproduced, excluding the unit #)

The clause required rent payment on the first day of each month.

The landlord has requested compensation for the month of March 2015. There was no dispute that the tenant over-held in the unit beyond the February 28, 2015 effective date of the Notice. The tenant agreed that she should not live in the unit for free but thought the landlord should issue a 10 day Notice ending tenancy setting out the sum of rent owed. The tenant made several enquires to the Residential Tenancy Branch and was told that if rent was overdue she should receive a 10 day Notice ending tenancy.

The tenant confirmed that when she received the landlord’s application for dispute resolution there was a claim for unpaid rent, but it exceeded the sum included in the employment/tenancy contract.

The tenant asked if she could submit a claim for loss of quiet enjoyment, to be heard during this hearing. I explained the hearing application process, which provides a fair process for service of claims and evidence.

The landlord said they would accept \$1,100.00 for March 2015 rent revenue.

Analysis

I have considered the landlord's request for market rent and the fact that the tenant occupied the rental unit beyond the effective date of the 1 month Notice ending tenancy. I concur with the decision issued on March 4, 2015 that the reduced rent payments were "inextricably linked" to the tenant's salary. The contract provides clarity on this point.

As I explained during the hearing; common sense dictates that the tenant would not be entitled to reside in the rental unit beyond the term of her employment in the absence of any rent payment. The tenant concurred.

The contract provided for reduced rent in the sum of \$100.00. The contract sets out market rent in the sum of \$1,100.00. The contract does not specifically require the tenant to pay rent after the employment ends and does not specifically set out the sum of rent that would be due in such a case.

Section 26 of the Act requires a tenant to pay rent when it is due. The contract required rent to be paid on the first day of each month. Residential Tenancy Branch policy (#3) requires per diem rent to be paid for each day a tenant over-holds beyond the end of a tenancy.

In relation to the sum of rent owed, I find that the only reasonable conclusion that I can reach is that rent owed, once the employment was terminated, was \$1,100.00 per month. This is the sum indicated as market rent in the contract.

Section 62(3) of the Act provides:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies

Therefore, I find, pursuant to section 67 and 62(3) of the Act that the landlord is entitled to compensation in the sum of \$1,100.00 for the month of March 2015 as the total per diem rent for each day the tenant remained in the unit.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,150.00. 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.

Conclusion

The landlord is entitled to a monetary Order for loss of March 2015 rent revenue.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 16, 2015

Residential Tenancy Branch

