



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting return of the security deposit and filing fee costs.

This landlord applied requesting compensation for damage or loss under the Act, to retain the security deposit 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 evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit in the sum of \$500.00 paid to the landlord?

Is the landlord entitled to loss of rent revenue in the sum of \$990.00, less the security deposit?

Background and Evidence

There was no dispute that the parties met on July 29, 2014 at which time the tenant paid the landlord \$500.00 to secure rental of a unit. The parties agreed that the tenant would take possession; however the tenant said possession was to occur effective August 8. The landlord said possession was to be within 10 days. This was to be a 1 year fixed-term tenancy.

The tenant met with the landlord on August 4, 2014; he had his son with him. At this time the tenant declined to sign the tenancy agreement and decided not to move into the unit. The tenant said the landlord had a tenancy term that required him to pay for replacement of a garbage can should it go missing. The agreement was to commence on August 5, 2014; not August 8, 2014 as the tenant believed it should. The tenant said on those 2 grounds he felt he did not wish to rent from the landlord.

The tenant did not supply a written forwarding address to the landlord until he served his application for dispute resolution.

The landlord stated that she had accepted the \$500.00 as a security deposit and that when the tenancy commenced the tenant would owe a security deposit in the sum of \$490.00 and she would return the \$500.00 to the tenant. By paying the deposit the tenant agreed to rent the unit. Once the landlord received the deposit paid on July 29, 2014 she ceased looking for renters.

The landlord submitted a copy of a July 27, 2014 email sent to a potential renter by the landlord. The landlord informed that person that the unit was available. On August 1, 2014 the potential renter emailed the landlord with a request to view the unit. The landlord replied saying she was sorry but the unit had been rented and was not available. On August 4, 2014 the landlord emailed that potential renter asking if they were still interested as the tenant was now not going to move into the unit. The email explained that the tenant was rejecting the unit because of a reason given by his son. The landlord said the potential renter responded that they were no longer interested.

The landlord located a new renter. A copy of a tenancy agreement signed on August 30, 2014 for a tenancy to commence that date for the unit was supplied as evidence.

The landlord has claimed loss of rent for August as a result of the tenant's failure to meet his obligation to rent the unit. The landlord said there was no term of the tenancy related to a garbage can and that the tenant had agreed to take possession within 10 days of July 29, 2014. The landlord said it was the tenant's son who decided he did not want to live in the unit.

The tenant said the landlord is lying. The tenant did not respond to the landlord's submission that he refused to move in due to objections raised by his son.

Analysis

From the evidence before me I find that the tenant paid a security deposit in the sum of \$500.00 to the landlord on July 29, 2014. I have considered the payment of this sum in relation to the start of a tenancy. Section 17 of the Act provides:

Landlord may require security deposit

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement

Therefore, I find that the security deposit was paid on July 29, 2014 and that payment was made as a condition of entering into the tenancy agreement that was to commence within 10 days. There was no evidence before me setting out a specific tenancy start date.

I find, on the balance of probabilities that the landlord intended to sign the tenancy agreement with the tenant on August 4, 2014. She did not seek out further tenants after July 29, 2014 and in fact, rejected a potential renter as she believed the tenant had committed to the unit. I have relied upon the email evidence which demonstrates rejection of a potential renter.

Even though the landlord said she would repay the \$500.00 at the start of the tenancy and then accept a deposit of \$490.00 I find that this statement made by the landlord confirmed that a deposit had been paid. It is the equivalent of the landlord saying she would return \$10.00 to the tenant. The tenancy agreement submitted as evidence indicated a deposit in the sum of \$500.00 had been paid.

I have rejected the tenant's submission that a term related to a garbage can and the start date of the tenancy were sufficient for him to terminate a tenancy. Just as the landlord had entered into an agreement and was required to provide the unit to the tenant; the tenant was required to continue with the tenancy and take possession. If there was a dispute over the payment of rent between August 4 and 8, 2014, the tenant could have brought forward an application for dispute resolution. I find that the tenancy had already been established and the tenant could only end the tenancy by giving proper written notice in accordance with section 45 of the Act.

I find, on the balance of probabilities, that the tenant's refusal to meet his obligation to pay rent resulted in a loss of rent revenue to the landlord. The landlord did locate a new renter for the end of August, but lost that month's rent as a result of the tenant's breach of the Act.

Given the lack of clarity such as a receipt issued setting out a specific start date of the tenancy I find that the tenancy was to commence by August 8, 2014; the tenth day after July 29, 2014. The rent owed has been calculated from that date.

Therefore, I find that the landlord is entitled to compensation in the sum of \$32.55 per day from August 8 to 29, 2014 in the sum of \$683.55. The balance of the claim is dismissed.

The landlord may retain the security deposit in partial satisfaction of the claim.

As the landlord's application has merit I find the landlord is entitled to recover the \$50.00 filing fee from the tenant.

Based on these determinations I grant the landlord a monetary Order for the balance of \$233.55. 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.

The tenant's application is dismissed.

Conclusion

The landlord is entitled to compensation on a per diem basis from August 8 to 29, 2014 inclusive. The balance of the claim is dismissed.

The landlord may retain the security deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

This decision is final and binding 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 17, 2015

Residential Tenancy Branch

