



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that he sent the Application for Dispute Resolution and the Notice of Hearing to the Landlord, by registered mail, although he cannot recall the date of service.

On December 30, 2014 and January 12, 2015 the Landlord submitted documents to the Residential Tenancy Branch, in response to the Tenant's claims. I find that these documents corroborate the Tenant's testimony that the Application for Dispute Resolution and Notice of Hearing were served to the Landlord. I therefore find, pursuant to section 71(2)(b) of the *Residential Tenancy Act (Act)*, that by December 30, 2014 the Landlord had been served with the Application for Dispute Resolution and Notice of Hearing. The hearing proceeded in the absence of the Landlord.

The Tenant stated that he did not receive any documents from the Landlord in regards to this Application for Dispute Resolution. As there is insufficient evidence to determine that the documents submitted to the Residential Tenancy Branch by the Landlord on December 30, 2014 and January 12, 2015, I am unable to consider those documents when rendering a decision in this matter.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being required to move from the rental unit?

Background and Evidence

The Tenant stated that he moved into the rental unit "a couple of days before the end of May" in 2014 and that he agreed to pay monthly rent of \$550.00.

The Tenant stated that he signed a written tenancy agreement that declared he must move out of the rental unit by November 30, 2014 unless the parties sign a new tenancy agreement prior to the end of September of 2014.

The Tenant stated that he and the female Landlord told him that she would sign a new tenancy agreement, although he cannot recall the date of that discussion. He stated that he expected a new agreement would be signed on November 27, 2014, which he refers to as “disability day”, but that a new agreement was never signed.

The Tenant stated that on November 27, 2014 one of the Landlords told him that the Landlord did not wish to sign a new tenancy agreement and that he must move out by November 30, 2014. He stated that he did move out on November 30, 2014 and that the Landlords’ son helped him move his property to his new residence. He stated that he moved out of his new residence after five days and was homeless thereafter for a period of time.

The Tenant stated that the Province of British Columbia paid rent on his behalf directly to the Landlord during this tenancy. He stated that he did not inform the Province that he would be moving out of the rental unit at the end of November because he did not anticipate moving, so rent was paid to the Landlord for December of 2014.

The Tenant stated that he asked the Landlord to give him the rent for December and the Landlord told him the payment would be returned to the Province. He stated that he believes the Landlord returned the rent payment for December to the Province, at an address somewhere in Vancouver, B.C., on December 02, 2014 or December 03, 2014. He does not recall whether he ever received his rent payment from the Province for December of 2014.

The Tenant is seeking compensation, in the amount of \$900.00, because:

- he believes the Landlord should have given him more notice that he would have to vacate on November 30, 2014;
- the Landlord should have returned the rent payment for December to him instead of returning it to the Province;
- he missed work and had to spend considerable time trying to recover the rent payment for December.

The Tenant wished to call a witness from the community to corroborate the Tenant’s testimony that he was rendered homeless as the result of the actions of the Landlord. He was advised that I accept his evidence that he was homeless after he moved out of the residence he moved into on November 30, 2014, and that there was no reason to call this witness. The Tenant concurred that this witness was not necessary if I accepted that he was homeless after moving out of his “new” residence.

Analysis

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant for damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Tenant, I find that he entered into a written tenancy agreement with the Landlord, which required him to vacate the rental unit by November 30, 2014 unless the parties entered into another written tenancy agreement prior to September 30, 2014. Even if the female Landlord told the Tenant that the Landlord was willing to sign a new agreement, I find that this tenancy ended on November 30, 2014 unless a new tenancy agreement was signed. Both parties had a responsibility to ensure another tenancy agreement was signed prior to September 30, 2014 if they wished the tenancy to continue.

As the Tenant clearly understood that he must enter into another written tenancy agreement prior to September 30, 2014 if the tenancy was to continue and he did not enter into another written tenancy agreement, I find that the Tenant knew, or should have known, that the tenancy would end on November 30, 2014. I therefore find that the Tenant was obligated to vacate the rental unit on November 30, 2014 and that the Landlord was not obligated to provide the Tenant with notice of the need to vacate on that date.

I find there is no evidence that the Landlord breached the *Act* or the tenancy agreement when the Landlord told the Tenant that he must vacate the rental unit by November 30, 2014 or when the Landlord did not enter into a new tenancy agreement. I therefore cannot conclude that the Tenant is entitled to compensation for being required to vacate the rental unit by November 30, 2014.

Section 26 of the *Act* authorizes a landlord to collect rent when it is due. If rent is paid that is not due, a landlord has an obligation to refund the rent. On the basis of the undisputed testimony, I find that the Province of British Columbia paid rent on behalf of the Tenant to the Landlord for December of 2014 and that the Landlord returned that payment to the Province on December 02, 2014 or December 03, 2014. I find that the Landlord acted reasonably and responsibly when the Landlord returned the rent payment for December of 2014 to the payee within a few days of receiving it. In the absence of evidence to show that the Landlord breached the *Act* or the tenancy agreement by returning the payment directly to the payee, rather than to the Tenant, I find that the Tenant is not entitled to compensation for the payment being returned to the payee.

In determining this matter I find that the Tenant could have avoided the problem with his rent payment for December of 2014 by informing the Province of British Columbia that he was required to vacate the rental unit by November 30, 2014. I find that if this notice been given, it is highly likely that the Province would not have paid rent to the Landlord for December of 2014 and it would not have been necessary for the Landlord to refund the payment. I therefore find that any delay in receiving rent for December of 2014 was largely the fault of the Tenant, and that the Landlord is not obligated to compensate the Tenant for the resulting delay.

Conclusion

The Tenant has failed to establish a monetary claim and I dismiss the Application for Dispute Resolution in its entirety.

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: June 11, 2015

Residential Tenancy Branch

