



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 03, 2014 the Application for Dispute Resolution, the Notice of Hearing, and seven pages of evidence the Landlord submitted to the Residential Tenancy Branch on December 01, 2014 were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 03, 2015 the Tenant submitted 14 pages of evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the male Landlord on June 03, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant's evidence included several written declarations from witnesses. The Tenant stated that she was able to call the authors of those documents as witnesses if the Landlord wished to question any of them regarding the content of the letters. The Landlord stated that she had no questions for the authors. The Tenant did not call any of them as witnesses after being advised that I would be considered the uncontested written statements that had been submitted.

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.

I note that although I have reviewed all of the documents submitted in evidence, they are referred to in this decision only if they are relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue?

Background and Evidence

The Landlord and the Tenant agree that:

- on November 14, 2014 they signed a tenancy agreement which declared the tenancy was to begin on December 01, 2014;
- the Tenant agreed to pay monthly rent of \$1,000.00 by the first day of each month;
- on November 14, 2014, the Tenant paid a pet damage deposit of \$500.00, a security deposit of \$500.00, and \$500.00 in rent for a portion of November of 2014;
- on November 15, 2014 the Landlord returned \$1,400.00 to the Tenant;
- the Tenant agreed that the Landlord could keep \$100.00 of her payment in compensation for the Landlord's inconvenience; and
- they did not discuss whether the \$100.00 was being kept from the rent payment or the security/pet damage deposit.

The Tenant stated that on November 14, 2014 the Landlord gave the Tenant a key to the rental unit; the Landlord agreed she could move in on November 15, 2014; and the Tenant agreed to pay \$500.00 in rent for the period between November 15, 2014 and November 30, 2014.

The Landlord stated that on November 14, 2014 she gave the Tenant a key to the rental unit because she was busy and could not meet the Tenant later to provide her with the key; she agreed the Tenant could move in on November 16, 2014; and the Tenant agreed to pay \$500.00 in rent for the period between November 16, 2014 and November 30, 2014.

There is a note on the tenancy agreement submitted in evidence by the Landlord which declares that the Tenant would like to move in as soon as possible and that "rent pro-rated for 2 weeks of November 2015 is \$500.00" (sic).

The Landlord stated that:

- the Tenant contacted her on November 15, 2014 and advised her that the rental unit was not clean;
- she met the Tenant at the rental unit and agreed it needed cleaning;
- she assured the Tenant she would have it cleaned by 5:30 on November 15, 2014;
- she offered to pay the Tenant \$100.00 to clean the rental unit; and
- she believes the Tenant choose not to move into this rental unit because she preferred another rental unit that had become available.

The Tenant stated that:

- she contacted the Landlord on November 15, 2014 and advised her that the rental unit was not clean;
- the Landlord met her at the rental unit and agreed it needed cleaning;
- the Landlord did not offer to pay the Tenant \$100.00 to clean the rental unit;
- the Landlord told her she would make arrangements to have the rental unit cleaned but she did not tell her specifically when it would be cleaned;
- the Landlord told her that her and her friends/family could clean the unit in a few hours; and
- that after she entered into this tenancy agreement she learned of another available unit, so she decided to move into that unit once she determined this unit was not clean.

The Landlord is seeking lost revenue for the period between November 15, 2014 and January 05, 2014, in the amount of \$1,500.00. At the hearing she reduced the claim to \$1,400.00, as she retained \$100.00 of the money the Tenant paid to her on November 14, 2014. The Landlord stated that the advertisement for the rental on a popular internet set remained active, as she had not had time to remove cancel it after entering into this tenancy agreement. She stated that on the basis of that advertisement she was able to find a new occupant for January 05, 2015.

Analysis

There is a general legal principle that places the burden of proving a claim on the person who is seeking compensation, which in these circumstances is the Landlord. I find that the Landlord has submitted insufficient evidence to establish that the tenancy did not begin until November 16, 2014, as the Landlord contends. I therefore accept the Tenant's testimony that the tenancy began on November 15, 2014.

In determining that the tenancy began on November 15, 2014 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 held 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 should be interpreted in the favour of the Tenant.

The tenancy agreement created by the Landlord indicates that the keys were provided on November 14, 2014 and that the Tenant would like to move in as soon as possible, although the tenancy agreement does not actually specify when the Tenant can move in. I find it would be reasonable for the Tenant to assume that she could move into the rental unit by November 15, 2014, given that the unit was empty and she had permission to move into the rental unit as soon as possible. Had the Landlord not

wanted the Tenant to move into the unit until November 16, 2014, the Landlord should have clearly stated that date on the agreement.

In determining that the tenancy began on November 15, 2014 I was influenced, in part, by the Landlord's testimony that she offered the Tenant \$100.00 to clean the rental unit and that if the Tenant did not wish to clean the unit she would ensure it was cleaned by 5:30 on November 15, 2014. Had the Tenant moved in prematurely, I find it unlikely that the Landlord would have promised to have the rental unit cleaned so promptly. Rather, I find it likely that the Landlord would simply have told the Tenant that the rental unit would be cleaned by November 16, 2014.

I find that this tenancy ended on November 15, 2014, pursuant to section 44(1)(d) of the *Act*, when the Tenant opted not to move into the rental unit. I find that the Tenant failed to comply with section 45 of the *Act* when she vacated/abandoned the rental unit without provided one month's written notice of her intent to vacate. As the Tenant did not provide proper notice of her intent to end the tenancy on November 15, 2014, I find that she remained obligated to pay the rent of \$500.00 that was due for November. As the Tenant has already paid \$100.00 to the Landlord, I find that she still owes \$400.00 in rent for November of 2014.

While I accept that the rental unit required cleaning at the start of the tenancy, there is nothing in the *Act* that authorizes a tenant to prematurely end a tenancy as a result of the need to clean, providing the unit can be cleaned in a reasonably timely manner.

Section 45(3) of the *Act* authorizes a tenant to end the tenancy without a full month's notice if a landlord has failed to comply with a material term of the tenancy agreement and the landlord does not corrected the situation within a reasonable period after the tenant gives written notice of the failure. In these circumstances, the Tenant did not give the Landlord written notice of the need to clean nor did the Tenant give the tenant a reasonable opportunity to clean the unit.

The *Act* does allow a tenant to seek compensation for any costs incurred as a result of being unable to move into a rental unit at the start of the tenancy. In these circumstances, I find that the Tenant should have provided the Landlord with a reasonable opportunity to clean the rental unit and then sought compensation for any losses incurred as a result of the delay in moving into the unit, which may have included costs such as staying in a hotel temporarily, storing personal property, or hiring cleaners.

Section 45 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. As rent was due on the first day of the month the Tenant did not have the right to end this tenancy until the end of the month. The Tenant did not have the right to end this tenancy on November 30, 2014, as that did not give her sufficient time to provide the Landlord with one month's notice of her intent to vacate the rental unit.

Had the Tenant provided the Landlord with written notice of her intent to vacate the rental unit on November 15, 2014, the earliest she could have ended the tenancy, in accordance with section 45 of the *Act*, would have been December 31, 2014.

I find that the Landlord made reasonable efforts to locate a new tenant for December of 2014 but, in spite of those efforts, was unable to find a new tenant for that month. In spite of the efforts to mitigate the loss, I find that the Landlord did suffer a loss of revenue for the month of December of 2014 that the Landlord would not have experienced if the Tenant remained in the rental unit until the end of December. I therefore find that the Tenant must compensate the Landlord for lost revenue from December, in the amount of \$1,000.00.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,450.00, which is comprised of \$1,400.00 for unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$1,450.00. 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.

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 20, 2015

Residential Tenancy Branch

