



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on October 15, 2014 seeking to obtain a Monetary Order for damage or loss under the *Act*, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Tenant, the Landlord and the Landlord's daughter who Acted as the Landlord's Agent. Each party gave affirmed testimony and confirmed receipt of evidence served by each other. The Landlord's testimony was submitted by her Agent, her daughter, therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the Landlord and Tenant entered into a verbal tenancy agreement that began on November 1, 2013. Rent of \$1,000.00 was payable on the first

of each month and on October 6, 2013 the Tenant paid \$500.00 as the security deposit. The Tenant vacated the rental property as of March 31, 2014.

The Landlords testified that the rental agreement was supposed to be a one year lease and the Tenant told the Landlord that because she was a student she did not have to sign a contract. The Landlord asserted that the Tenant told her she would stay for one year.

The Landlords submitted that in early March 2014 the Tenant verbally told her that she would be moving out by the end of March 2014. The Landlords argued that the Tenant did not provide them with written notice to end her tenancy and that they were not able to re-rent the unit until September 1, 2014. As a result the Landlord is seeking to recover the lost rent for the period of April 2014 to August 2014 in the amount of \$5,000.00 (5 x \$1,000.00).

The Tenant testified that she recalled the Landlord asking her to rent long term and that she told the Landlord that she hoped so. She argued that she did not see that there was a contract for a one year lease and the only thing that was signed was the receipt for the payment of her security deposit. As for her notice she said she told the Landlord over the phone, sometime in early March, that she would be moving out at the end of March 2014.

In closing the Landlord pointed out that the Tenant's evidence indicated that the Tenant gave her notice on March 5 or 6th, 2014. She argued that there discussion was in person and not over the phone.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the above, in absence of a written tenancy agreement, I find that the terms of this verbal tenancy agreement were a month to month tenancy and not a fixed term lease and those terms are recognized and enforceable under the *Residential Tenancy Act*.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this *Act* or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 45 (1) of the *Act* stipulates that a tenant may end a periodic month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As per the foregoing, the Tenant was required to provide the Landlord with written notice to end her tenancy no later than February 28, 2014, if she intended to end her tenancy on March 31, 2014. The Tenant gave verbal not written notice and that notice was not provided until March 5th or 6th, 2014. Therefore, I conclude that the Tenant ended her tenancy in breach of section 45(1) of the *Act* and that breach caused the Landlord to suffer a subsequent loss of rent.

As I determined that this was a month to month tenancy, the Landlord is only entitled to compensation for one month's lost rent due to the Tenant's breach of section 45(1) of the *Act*. Accordingly, I find there to be sufficient evidence to award the Landlord **\$1,000.00** for lost rent.

The Landlord has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,050.00** (\$1,000.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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 01, 2015

Residential Tenancy Branch

