



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession, a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The parties confirmed that the tenants moved out of the rental unit on October 1, 2015 and an order for possession is no longer required. The landlord's application for an order for possession is therefore dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The rental unit is the upper suite in the landlord's house in Victoria. She advertised the suite for rent. The tenants responded and the landlord agreed to rent the unit to the tenants at a monthly rent of \$1,900.00 commencing August 1, 2015. The tenants were permitted to move in on July 28, 2015. They paid a security deposit of \$800.00 after they moved in. There is no written tenancy agreement. The landlord said that she prepared a tenancy agreement for signature by the tenants and gave it to them after they moved away. The landlord then was away for a week and the tenants failed to sign and return the draft agreement.

The landlord served the tenants with a one month Notice to End Tenancy for cause at the end of August. I was not provided with a copy. The tenants failed to pay rent for September when it came due. On September 4, 2015 the landlord served the tenants with a 10 day Notice to End Tenancy for unpaid by attaching it to the door of the rental unit. Later on the same day she served the tenants with a two month Notice to End Tenancy for landlord's use by attaching it to the door. The landlord said that she intended the two month Notice to be effective in the event that the tenants paid the rent for September, in which case they would be expected to move out at the end of November.

The tenants moved out on October 1st. They said that they were not responsible for paying September rent. They referred to text messages that they said showed that the landlord had agreed that they did not have to pay rent for September. In a text message to the landlord the tenant said their conditions for moving were:

Our conditions are that the one month compensation be put towards this months rent plus our damage deposit back and an additional months rent for undue stress and discrimination against our children.
(reproduced as written)

The landlord responded that she would let the tenants: “stay this month no rent” and she would give the rental deposit back except for carpet cleaning. The landlord said that was all she was responsible for. The tenant rejected the landlord’s offer. The tenants did not submit any other documents or text messages to show that an agreement had been reached.

The tenants did not give the landlord any form of written notice before moving out on October 1, 2015.

In her application the landlord claimed unpaid rent for September in the amount of \$1,900.00. She claimed rent for October and claimed to retain the security deposit.

The landlord testified that she has moved into the upstairs portion of the house and has not attempted to re-rent it to new tenants. I understand that she intends to re-rent the basement suite that she formerly occupied.

Analysis

The tenants failed to pay rent for September when it was due. The fact that they were served with a one month Notice to End Tenancy does not alter their obligation to pay rent even if they intended to move out pursuant to the Notice to End Tenancy for cause. The landlord served the tenant with two more Notices, one for unpaid rent and one for landlord’s use. The tenants claimed that they moved out pursuant to the two month Notice to End Tenancy and they said that the landlord agreed that they did not have to pay rent for September. I do not accept the tenants’ submissions on this point. There were some negotiations exchanged by text message, but no concluded agreement was made. The tenants were in default of September’s rent even before the two month Notice was given. If the tenants intended to rely on the two month Notice to End Tenancy for landlord’s use, then they would be expected to stay in the unit until the effective date of the Notice to End Tenancy, which was November 30, 2015 and they would have been entitled to withhold rent for November. Alternatively, they could have moved out early pursuant to the provisions of section 50 of the *Residential Tenancy Act*, but they could only do so under this section by giving the landlord at least 10 days written notice to end the tenancy on a date earlier than the effective date of the

landlord's and by paying the landlord at the same time that the notice is given, the proportion of the rent due to the effective date of the tenant's notice.

The tenants did not have the landlord's agreement that they were not required to pay rent for September and I find that they did not comply with the provisions of section 50 of the *Act*.

The tenants submitted late evidence. The tenants' documents were received at the Residential Tenancy Branch in Victoria on October 13th and they arrived at the Burnaby office on October 15th. I received them after the hearing was concluded. The tenants have not filed an application for dispute resolution, but they included as part of their evidence package a monetary order worksheet seeking payment of the sum of \$2,947.00. There is no application for dispute resolution filed by the tenants before me and I have disregarded this claim.

I find that the landlord is entitled to a monetary award for unpaid rent for September, but she is not entitled to an award for October rent because she has made no effort to re-rent the unit and instead has moved into the unit herself.

Conclusion

I allow the landlord's claim for a monetary award for September rent in the amount of \$1,900.00. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,950.00. I order that the landlord retain the tenants' security deposit in the amount of \$800.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$1,150.00. This order may be registered in the 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: October 16, 2015

Residential Tenancy Branch

