



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OP, MNDC, MNR, MNSD, FF

Introduction

On August 19, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, to retain all of part of the security deposit, 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 an Application for Dispute Resolution. As this rental unit has been vacated, I find there is no need to consider the claim for an Order of Possession.

This Application for Dispute Resolution was joined with an Application for Dispute Resolution that names these Respondents as Landlords and a different party as the Tenant (Applicant). These two matters were scheduled to be heard together on November 02, 2015.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure stipulates that Applications for Dispute Resolution may be joined when all Applications relate to the same residential property and name the same landlord. As these two Applications for Dispute Resolution name a different party as the Landlord, I find they should not have been joined. I therefore severed the two Applications for Dispute Resolution.

The Tenant (Applicant) of the severed Application for Dispute Resolution was advised that a new hearing will be scheduled to consider the merits of her Application for Dispute Resolution. The merits of this Application for Dispute Resolution were considered at this hearing on November 02, 2015.

The Landlord stated that on August 21, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch were personally served to the female Tenant. The female Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 08, 2015 the Landlord submitted 32 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were left at the Tenants' door on October 08, 2015. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The male Tenant stated that on August 19, 2015 the Tenant submitted 16 pages of evidence to the Residential Tenancy Branch. He stated that these documents were mailed to the Landlord

on August 19, 2015. The Landlord stated that he received 25 pages of evidence in the mail from the Tenants.

The Tenants were advised that I could not locate an evidence package filed by the Tenant under this file number. The Tenants were given the opportunity to request an adjournment for the purposes of having these documents considered as evidence or to simply testify regarding any relevant documents. The male Tenant declined the opportunity for an adjournment.

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.

Preliminary Matter

The party with the initials "L.G." who was present at the hearing on November 02, 2015 but is not a party to these proceedings is the Applicant (Landlord) in the Application for Dispute Resolution that was severed from this Application for Dispute Resolution.

The party with the initials "P.C." who was present at the hearing on November 02, 2015 but is not a party to these proceedings was simply present because he was in a vehicle with the Respondent with the initials "J.K.".

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue?
Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- sometime prior to August 15, 2015 they each signed a written tenancy agreement, a copy of which was submitted in evidence;
- the tenancy agreement declared that the tenancy would begin on August 15, 2015;
- the tenancy agreement declared that rent of \$1,800.00 was due by the first day of each month;
- a security deposit of \$900.00 was paid on July 13, 2015;
- there is a separate suite in the residential complex;
- the Landlord gave the Tenants permission to rent the separate suite to a third party, effective August 01, 2015;
- the Tenants moved some furniture into the separate suite but they never moved property into the main portion of the rental unit;
- on August 09, 2015 the male Tenant sent the Landlord a text message in which he informed the Landlord the Tenants would not be moving into the rental unit; and
- the Tenant provided the Landlord with his forwarding address, in writing, on August 21, 2015.

The Landlord is seeking to recover \$400.00 in rent that was paid to the Tenants by the occupant of the suite, for the period between August 01, 2015 and August 15, 2015. The Landlord and the Tenants agree that the Tenants agreed to pay the Landlord \$350.00 for this period, as they did not have the right to legally possess the suite until August 15, 2015. The parties agree that the \$350.00 has not been paid.

The Landlord is seeking compensation for unpaid rent/lost revenue for August of 2015, in the amount of \$1,800.00. The Tenants agree no rent was paid for August.

The Landlord is seeking compensation for unpaid rent/lost revenue for September of 2015, in the amount of \$1,800.00. The Tenants agree no rent was paid for September.

The male Tenant stated that their decision to not move into the rental unit was due, in part, to the fact the patio door in the master bedroom was blocked with plywood.

The Landlord and the Tenants agree that:

- prior to the start of the tenancy the Landlord informed the Tenant a deck would be constructed;
- a patio door was installed sometime after the tenancy agreement was signed;
- the patio door was covered with plywood as the deck had not yet been constructed; and
- the Tenants were advised that construction of the deck could be delayed for up to a year, depending on when the building permit was issued.

The male Tenant stated that their decision to not move into the rental unit was due, in part, to the fact that a live electrical wire was protruding from the floor in the master bedroom. The Landlord acknowledged there was a live electrical wire in a bedroom, which he stated was rectified on August 14, 2015. The male Tenant stated that he does not know if the problem with the wire was rectified prior to the start of the tenancy.

The male Tenant stated that they did not give the Landlord written notice of their concerns with the live wire or the door/deck.

The Landlord initially stated that he advertised the rental unit on three popular websites beginning on September 01, 2015. Shortly thereafter he corrected his testimony and stated that advertised the rental unit on those websites beginning on August 17, 2015 or August 18, 2015. He stated that the rental unit was re-rented for November 01, 2015.

Analysis

On the basis of the undisputed evidence and, in particular, the tenancy agreement that was submitted in evidence, I find that the Tenants entered into a tenancy agreement for a tenancy agreement that was to begin on August 15, 2015.

On the basis of the undisputed evidence I find that the Tenants agreed to pay the Landlord \$350.00 for the right to have a third party occupy a self-contained suite in the rental unit for the period between August 01, 2015 and August 15, 2015. As there is no evidence this payment has been made, I find that the Tenants must pay the Landlord \$350.00.

On the basis of the undisputed evidence and, in particular, the tenancy agreement that was submitted in evidence, I find that the Tenants agreed to pay monthly rent of \$1,800.00 by the first day of each month and that they would only be required to pay pro-rated rent for the period between August 15, 2015 and September 30, 2015.

Section 45 of the *Residential Tenancy Act (Act)* authorizes a tenant to 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.

To end this tenancy on August 31, 2015 in accordance with section 45 of the *Act*, the Tenants would have had to give written notice of their intent to end the tenancy on, or before, July 31, 2015. There is no evidence that the Tenants gave proper notice to end the tenancy on, or before, July 31, 2015.

The earliest effective date of the notice to end tenancy that was given by the Tenants on August 09, 2015 was September 30, 2015, as that date 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. Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted by the *Act*, the effective date is deemed to be the earliest date that complies with this legislation. Therefore, I find that the notice to end tenancy that was given in August of 2015 served to end this tenancy on September 30, 2015.

I find that the Tenants failed to comply with section 45 of the *Act* when they provided the Landlord with written notice of their intent 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. I find that the late notice significantly contributed to the loss of rental revenue for the Landlord experienced between August 15, 2015 and September 30, 2015. I therefore find that the Tenants must compensate the Landlord for the loss of revenue experienced during this period, in the amount of \$2,700.00. This award includes \$1,800.00 for the month of September and \$900.00 pro-rated rent for the period between August 15, 2015 and August 31, 2015.

In adjudicating this matter I have placed no weight on the undisputed fact that a patio door was covered with plywood until such time as a deck was constructed outside of the door.

Section 45(3) of the *Act* stipulates that if a landlord fails to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Even if I were to determine that the presence of the plywood over the patio door and the absence of a deck was a breach of a material term of the tenancy agreement, I cannot conclude that the Tenants had the right to end this tenancy in accordance with section 45(3) of the *Act*, as there is no evidence the Tenant gave the Landlord written notice of the problem with the door/deck before providing notice of their intent to vacate.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the live electrical wire in the master bedroom was rectified prior to start of the tenancy. I therefore find that Tenants had no right to end this tenancy on the basis of that issue.

I find that the Landlord's Application for Dispute Resolution 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 \$3,100.00, which is comprised of \$3,050.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$900.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$2,200.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: November 02, 2015

Residential Tenancy Branch

