



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPN MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession based on a tenant’s notice to end tenancy, for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The landlord and tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence of the landlord and that the evidence was reviewed prior to the hearing. The tenant confirmed that she did not submit documentary evidence in response to the landlord’s application. I find the tenant was served with the landlord’s evidence in accordance with the *Act* and Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the tenant had already vacated the rental unit in May of 2015. As a result, the landlord requested to withdraw her request for an order of possession as the tenant had already returned possession of the rental unit back to the landlord prior to the hearing. The landlord’s request to withdraw her request for an order of possession was granted as I find that such a request does not prejudice the tenant.

Also at the outset of the hearing, the tenant requested an adjournment so that she could have enough time to afford the cost of the filing fee so that she could file a cross-application, and that she did not submit documentary evidence as she could not afford the filing fee. After considering the criteria for granting an adjournment in accordance with the Rules of Procedure, the tenant’s request for an adjournment was denied. In reaching this decision I first considered that there is no filing fee involved to submit evidence in response to the landlord’s application. Secondly, I find there would be a greater prejudice to the landlord who attended the hearing and was ready and willing to proceed and did not consent to the tenant’s request for an

adjournment. Thirdly, I find that the tenant's request for more time so that she could afford the filing fee not be a reasonable request for an adjournment as the landlord's application will be heard on its' own merits and that if the landlord is not successful in claiming towards the tenant's security deposit, it will be ordered returned to the tenant.

In addition to the above, both parties were advised that the landlord's application for monetary compensation related to damages to the rental unit or site was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because the landlord's application for dispute resolution did not provide sufficient particulars of their claim for compensation in relation to damages, as is required by section 59(2)(b) of the *Act*.

I find that proceeding with the landlord's claim for damages at this hearing would be prejudicial to the tenant, as the absence of particulars that set out how the landlord arrived at the amount of \$575 in damages makes it difficult, if not impossible, for the tenant to adequately prepare a response to that portion of the landlord's monetary claim. The landlord failed to specify a detailed breakdown of the damages portion of their monetary claim including the amount of each item and what each item being claimed represents in terms of the total amount of \$575, which happens to be the exact amount of the security deposit.

The landlord is at liberty to reapply; however, are reminded to provide a detailed breakdown of their monetary claim and is encouraged to use the Monetary Worksheet available at www.rto.gov.bc.ca when submitting a monetary claim. Applicants may include any additional pages to set out the details of their dispute in their application, as required.

In addition to the above and by consent of the parties, the tenant's new mailing address was updated on the landlord's application to include the correct unit number of the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence; however, the parties agreed that a fixed term tenancy began on June 1, 2014 and required the tenant to provide vacant possession of the rental unit to the landlord as of May 31, 2015. Both parties agreed that the initialed the area on the tenancy agreement that required vacant possession to be provided to the landlord at the end of the tenancy.

The parties agreed that monthly rent in the amount of \$1,150 was due on the first day of each month. The parties agreed that the tenant paid a security deposit of \$575 at the start of the tenancy which the landlord continues to hold.

The landlord testified that she was seeking the loss of June 2015 rent in the amount of \$1,150 due to the tenant agreeing in an e-mail dated April 24, 2015 where the tenant writes "...I appreciate going to a month to month basis lease instead of a year" and that she does not have any plans to move any time soon. In the same e-mail the tenant writes "Don't worry about notice – I would never leave without giving you a month's notice".

In the landlord's e-mail response to the tenant dated April 28, 2015, the landlord writes "...It is great news that you can stay. The next cheque that is needed is for June 1. Please could you forward 12 cheques to the address below for the same amount (no rental increase)...". On May 3, 2015, the tenant sends another e-mail stating that her brother has passed away and that she has to leave as a result of having to stop work to take care of her mother.

The landlord stated that as of May 3, 2015, she immediately started to advertise the rental unit so that she could find a new renter as soon as possible. The landlord stated that she was able to secure a new renter as of July 15, 2015. A copy of the online advertising was submitted in evidence.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. In the matter before me, the landlord has the burden of proof as she has claimed against the tenant for monetary compensation.

Claim for loss of June 2015 rent – While there is no dispute that the tenancy agreement was originally a fixed term tenancy scheduled to end on May 31, 2015, the matter before me is whether the parties entered into a new tenancy agreement based on the e-mails sent between the parties submitted in evidence. After carefully considering the e-mail communication between the parties, I find that the parties did enter into a new month to month tenancy as of April 28, 2015, when the landlord confirmed the tenant's request to stay in the rental unit beyond what would have been the end of tenancy date, May 31, 2015. In reaching this decision, I have considered that the tenant would have benefited from this arrangement by not having to move by May 31, 2015, if her personal circumstances had not changed as of May 3, 2015.

The fact that on May 3, 2015, the tenant changed her mind due to a change in her personal circumstances is not the fault of the landlord and does not change the fact that the landlord had the right to rely on the tenant's e-mail dated April 24, 2015 confirming that the tenant appreciated going month to month, that she had no plans to leave any time soon and not to worry about notice, that she would never leave without giving at least a month's notice.

I have also considered that in the April 28, 2015 e-mail, the landlord confirmed for the tenant that there would be no rent increase which supports a new month to month, also known as periodic, tenancy agreement was being formed and that 12 new cheques, the first of which is due June 1, 2015 would be required from the tenant.

Given the above, I find the tenant breached section 45(1) of the *Act* which states:

Tenant's notice

45 (1) A tenant may end a **periodic tenancy** by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **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.**

[my emphasis added]

As a result, I find the earliest the tenant could have ended the tenancy based on giving notice on May 3, 2015, after taking into consideration that rent is due on the first day of each month, would have been June 30, 2015. Therefore, I find the landlord has met the burden of proof and is owed **\$1,150** for the loss of June 2015 rent. I find the landlord has submitted sufficient evidence to support that she complied with section 7 of the *Act* in attempting to minimize her loss by advertising the rental unit online, and that she was able to secure a new renter as of July 15, 2015.

As the landlord has succeeded with her application, I grant the landlord the recovery of the cost of the **\$50** filing fee.

I find that the landlord has established a total monetary claim of **\$1,200** comprised of loss of June 2015 rent in the amount of \$1,150, plus recovery of the filing fee in the amount of \$50.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$575 which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$575 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of **\$625**.

Conclusion

The landlord's application is successful.

The landlord has been authorized to retain the tenant's full security deposit of \$575 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of \$625. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2015

Residential Tenancy Branch

