



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maude, Mackay & Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, OPB, OPN, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit, to end the tenancy based on a fixed term tenancy and to end the tenancy based on notice of the tenant and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application set out a claim in the sum of \$1,800.00 for loss of one-half of October 2015 rent revenue. The landlord confirmed that they wish to retain the security deposit in satisfaction of the claim and recover the filing fee cost.

The tenancy has ended; an order of possession is not required.

The tenant confirmed receipt of the landlord's application and hearing documents in November 2015. The documents were sent to the forwarding address provided by the tenant in September 2015. The tenant said she did not fully examine the documents at the time they were received.

The tenant confirmed receipt of the landlord's 11 pages of evidence several days prior to the hearing. The landlord was not sure that evidence had been served with the application so it was mailed to the tenant recently. The landlord could not recall the date the evidence was mailed. That evidence was given to the Residential Tenancy Branch on April 25, 2016.

I explained the Rules of Procedure in relation to service of documents. As there was no evidence before me the evidence was given with the application and, as the landlord could not recall when the evidence was mailed to the tenant I determined that the evidence would be set aside. There must be evidence before me that the landlord

served the tenant at least 14 days before the hearing and the landlord was unable to prove service.

The tenant said she would have put in copies of email evidence. I explained that the tenant had ample opportunity to make a written submission as she had received the hearing documents five months previously and the claim was fully set out in the application. The tenant requested an adjournment and that was declined. Adjournments are not meant as an opportunity to allow a party to prepare for a hearing.

Agreement was reached that each party had a copy of the tenancy agreement, for reference.

Both parties were at liberty to make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,800.00 for loss of one-half of October 2015 rent revenue?

Background and Evidence

The tenancy commenced in June 2015 as a fixed-term to end November 30, 2015, when the tenant would vacate. The tenant paid \$3,600.00 monthly rent for the furnished rental unit; rent was due on the first day of each month. The tenant agreement included a liquidated damages clause.

A move-in condition inspection report was completed.

The tenant sent the landlord an email on July 19, 2015 indicating she would likely vacate the rental and was thinking of September, 2015. On August 11, 2015 the landlord sent a message telling the tenant there was two applicants for the unit and that proper notice was required if the landlord was to proceed with attempts to rent the unit. On August 12, 2015 the tenant sent an email indicating she would vacate on September 30, 2015.

The landlord started to show the suite and said there were multiple emails sent between the landlord and tenant. At one point the landlord enquired if the tenant would consider leaving earlier as there might be an opportunity to rent the unit. The landlord showed the unit four times; one party looked at the unit multiple times and rented it effective November 1, 2015.

The landlord said that when they confirmed the tenant was leaving; they were not agreeing; only acknowledging. The landlord said that the tenant was aware of the details of the contract.

The landlord read from an email sent on September 29, 2015 asking the tenant to confirm the inspection for the next day. The tenant responded asking if the unit had been rented, as she might need to stay a few more days. The landlord replied that she could charge the tenant for extra days as the unit would not be occupied and that it was rented for November 1, 2015. The tenant responded that she would get back to the landlord. A short time later the landlord emailed the tenant to ask if she was going to

vacate or remain in the unit beyond September 30, 2015. The tenant did not respond and the next day the inspection was completed.

Initially the tenant had said that she had offered to remain in the unit and could have reduced the loss of October rent revenue. After the landlord read from the emails sent on September 29, 2015 the tenant chose not to rebut the content of those emails.

The tenant signed the move-out condition inspection report and provided her forwarding address. The landlord applied claiming against the deposit within 15 days.

Analysis

From the evidence before me I find that the tenant signed a fixed term tenancy that ended effective November 30, 2015. Section 45(2) of the Act sets out how a tenant may end a fixed-term tenancy:

- 2) A tenant may end a fixed term 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,*
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
 - (c) 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.**
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.*
- (4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

There is no dispute that on August 12, 2015 the tenant confirmed that she would vacate on September 30, 2015. As the end of tenancy date pre-dated the date agreed to by the parties in the tenancy agreement, I find that the tenant failed to comply with section 45 of the Act. There was no evidence before me that the landlord had failed to comply with a material term of the tenancy.

The landlord's acknowledgment of the end of the tenancy cannot be seen as agreement to waive the landlord's rights under the terms of the tenancy agreement; although it appears the tenant may have believed that was the case.

I find that the landlord took immediate steps to mitigate a loss of rent revenue by advertising and showing the unit. The landlord was also willing to allow the tenant to remain in the unit, into October, which would have reduced the loss claimed by the landlord.

I find that the landlord has proven on the balance of probabilities that they suffered a loss of one-half of one months' rent as a result of the tenants decision to vacate, in breach of the terms of the tenancy agreement and section 45 of the Act.

Despite the liquidated damages clause and the loss of one months' rent the landlord has only requested retention of the security deposit.

Therefore, I find, pursuant to section 67 of the Act, that the landlord is entitled to compensation in the sum of \$1,800.00 for one-half of October 2015 rent revenue loss.

As the application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order in the sum of \$50.00. 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.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$1,800.00, in partial satisfaction of the monetary claim.

The landlord is entitled to the filing fee cost in the sum of \$50.00. A monetary order has been issued in the sum of \$50.00.

This decision is final and binding 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: May 06, 2016

Residential Tenancy Branch