



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 02, 2015 the Application for Dispute Resolution, the Notice of Hearing, and 45 pages of evidence the Landlord submitted with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these procedures.

On May 30, 2016 the Tenants submitted 14 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was personally served to the Landlords' business office on May 30, 2016. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Landlords entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began on October 06, 2014;
- the parties signed a tenancy agreement, which both parties submitted in evidence;
- the tenancy agreement declared that the tenancy was a fixed term tenancy, the fixed term of which ended on July 31, 2015;
- the tenancy agreement declared that the Tenants must move out of the rental unit by the end of the fixed term of the tenancy;
- the tenancy agreement declared that rent of \$1,450.00 was due by the first day of each month;
- the Tenants paid a security deposit of \$725.00;

- a condition inspection report was completed on October 06, 2014;
- the Tenants paid rent for June of 2015; and
- the parties attempted to reach a resolution about paying rent for July of 2015, but were unable to do so.

The male Tenant stated that:

- prior to signing the fixed term tenancy agreement the Tenants and the Landlords had verbally agreed that the rent would be \$1,150.00 and that the tenancy would be for a fixed term of six months;
- when they signed the tenancy agreement on October 06, 2014 the Landlords insisted on rent of \$1,450.00 and a fixed term of ten months;
- that prior to October 06, 2014 the parties had not discussed a fixed term of ten months or rent of \$1,450.00;
- they felt compelled to agree to the newly proposed term because they needed to move into the rental unit on October 14, 2014 and there were no other rental properties available in the area;
- on May 01, 2015 they verbally informed the Landlord of their intent to vacate the rental unit on May 31, 2015;
- they moved out of the rental unit on May 22, 2015.

The Agent for the Landlord stated that:

- in September of 2014 the parties did discuss a fixed term of six months;
- after she discussed the tenancy with her client the client insisted on a fixed term of ten months;
- she does not recall verbally agreeing to rent of \$1,150.00;
- she is certain that the parties had additional discussions after September of 2014 and that the parties agreed to the terms of the written tenancy agreement prior to meeting to sign the tenancy agreement;
- the Tenants gave verbal notice of their intent to vacate the rental unit, although she cannot recall the date that was given; and
- she is not certain when the Tenants moved out of the rental unit.

The Tenants submitted a copy of an email, dated September 08, 2014, in which the Agent for the Landlord declared that the Landlord was “agreeable to a 6 month lease”.

Both parties submitted a copy of an email, dated July 11, 2015, in which the male Tenant declared that the Tenants had “tried to get a 6 or 8 month lease” and that he thought the rent was too high in comparison to what previous tenants had paid.

Both parties submitted a copy of an email, dated June 08, 2015, in which the Agent for the Landlord stated that the owner would like to complete a move-out inspection on June 19th or June 20th. The Landlords submitted a copy of the male Tenant’s response to this email, in which he declared that the Landlord “will not be given access to the property until the end of the lease”.

Both parties submitted a copy of an email, dated July 13, 2015, in which the Agent for the Landlord stated that the owner will give the Tenants until July 15th to reach an agreement regarding rent for July. The Landlords submitted a copy of an email from the male Tenant in

which he declares the Landlord can have the keys and possession of the rental unit after the security deposit is returned.

The Landlords submitted a copy of an email, dated July 27, 2015, in which the male Tenant declares the keys are inside the townhouse and that the Tenants will not be attending the inspection.

The Agent for the Landlord stated that the keys were left inside the rental unit on July 27, 2015.

The Agent for the Landlord and the Tenant agree that the Agent for the Landlord scheduled a final condition inspection for July 16, 2015, which the Tenants could not attend.

The Agent for the Landlord stated that she posted a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the rental unit on July 21, 2015, in which she scheduled a final inspection for July 27, 2015. The female Tenant acknowledged receipt of this document; however the Tenants did not attend this inspection.

The Agent for the Landlord stated that she completed the final inspection, in the absence of the Tenants, on July 27, 2016.

The Landlords are seeking compensation of \$378.00 for cleaning. The Agent for the Landlord stated that the rental unit required significant cleaning at the end of the tenancy. She stated that the condition inspection report that was completed at the end of the tenancy and the photographs submitted in evidence accurately reflect the condition of the rental unit at the end of the tenancy.

The male Tenant acknowledged that the rental unit required cleaning at the end of the tenancy. He stated that the rental unit also required cleaning at the beginning of the tenancy and that the Tenants paid \$300.00 to clean the unit at the start of the tenancy. The Landlords submitted an invoice to show they were charged \$378.00 for cleaning the unit.

The Landlords are seeking compensation of \$315.00 for cleaning the carpet. The Agent for the Landlord stated that the carpet was stained and dirty at the end of the tenancy. She stated that the condition inspection report that was completed at the end of the tenancy and the photographs submitted in evidence accurately reflect the condition of the carpet at the end of the tenancy.

The male Tenant stated that the carpet was cleaned by the Tenants at the start of the tenancy but not at the end of the tenancy. He acknowledged that hot chocolate was spilled on the carpet during the tenancy that resulted in a "small" stain.

The Landlords are seeking compensation of \$61.00 for insurance. The Agent for the Landlord stated that her client advised her that her insurance costs increased by \$61.00 due to the rental unit being vacant for June and July of 2015. The Landlords submitted an invoice for a "personal lines package" however the Agent for the Landlord stated that no evidence was submitted to show additional insurance was required because the rental unit was vacant.

The male Tenant stated that the Landlords' insurance rate should not have increased because the Tenants were checking the rental unit on a daily basis and they informed the Landlord of the daily checks.

The Landlords are seeking compensation of \$273.00 for time spent preparing for these proceedings.

Analysis

On the basis of the testimony of both parties and the tenancy agreement submitted in evidence, I find that the Landlords and the Tenants entered into a written tenancy agreement; that the fixed term of the tenancy agreement began on October 06, 2014 and ended on July 31, 2015; and that the agreement required the Tenants to pay \$1,450.00 in rent by the first day of each month. As the Tenants signed this tenancy agreement, I find that they were obligated to comply with the terms of the tenancy agreement.

In determining that the parties were obligated to comply with the terms of the tenancy agreement I find that the Tenants have submitted insufficient evidence to establish that they were forced to sign the tenancy agreement because the Landlords changed some of the verbal terms of the agreement on the date the agreement was signed. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants claim that the parties had not discussed a fixed term of ten months or rent of \$1,450.00 prior to meeting to sign the tenancy agreement or that refutes the Agent for the Landlord's testimony that the parties had discussed those terms before they met to sign the tenancy agreement.

While I accept that the Agent for the Landlord sent the Tenants an email on September 08, 2014, in which the Agent for the Landlord declared that the Landlord was "agreeable to a 6 month lease", I find that is not conclusive evidence that the parties ultimately reached that agreement. I specifically note that the Tenants have not submitted their response to the email of September 08, 2014 nor have they submitted any other emails the parties exchanged in the subsequent four weeks. I find it entirely likely that the parties continued to negotiate the terms of the agreement, as the Agent for the Landlord contends, until such time as they reached the final terms of the agreement.

I specifically note that rent is not discussed in the email of September 08, 2014 nor did the Tenants submit any evidence to corroborate their submission that the Landlords agreed to rent of \$1,150.00. The absence of evidence showing that the parties finalized these terms of the agreement on September 08, 2014 supports my conclusion that there were on-going discussions about the terms of the tenancy.

In determining that there is insufficient evidence to show that the Tenants were forced to sign the tenancy agreement I was also influenced by the absence of evidence to corroborate the Tenants submission that there were no other rental properties available in the area. As the agreement was signed on October 06, 2014 and the Tenants did not intend to move until October 14, 2014, I find they had time to search for alternate accommodations if they did not wish to agree to the terms of the tenancy agreement.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave written notice to end this tenancy and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As the keys to the rental unit were returned prior to the end

of the fixed term of the tenancy agreement, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. Although the evidence shows that the Tenant stopped living in the rental unit on May 22, 2015 I cannot conclude that the tenancy ended on that date.

On the basis of the male Tenant's response to the Landlords' email of June 08, 2015, in which the Tenant declared that the Landlord "will not be given access to the property until the end of the lease", I find that the Tenants clearly informed the Landlord that they had not given up the right to possess the rental unit by the time that email was sent.

On the basis of the male Tenant's response to the Landlords' email of July 13, 2015, in which the Tenant declared that the Landlord could have the keys and possession of the rental unit after the security deposit is returned, I find that the Tenants clearly informed the Landlord that they had not given up the right to possess the rental unit by the time that email was sent.

On the basis of the undisputed evidence I find that the keys to the rental unit were returned to the Landlords on July 27, 2015. I find that the act of returning the keys indicates that the Tenants fully vacated the rental unit on that date. I therefore find that this tenancy ended on July 27, 2015 in accordance with section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenants retained legal possession of the rental unit until July 27, 2015, I find that they were obligated to pay the rent that was due on July 01, 2015. I therefore grant the Landlords' application for \$1,450.00 in rent from July of 2015.

Section 37(2) of the *Act* requires tenants to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the rental unit reasonably clean at the end of the tenancy. I therefore find that the Landlords are entitled to the \$378.00 they were charged for cleaning the unit.

I find that the Tenants were obligated to comply with section 37(2) of the *Act* even if the Landlords breached their duty to provide a reasonably clean unit at the start of the tenancy. In the event the Tenants believe they are entitled to compensation for cleaning the unit at the start of the tenancy, they retain the right to file an Application for Dispute Resolution seeking compensation for cleaning.

On the basis of the Tenants acknowledgment that there was a hot chocolate stain on the carpet at the end of the tenancy, I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the carpet in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to the \$315.00 they were charged for cleaning the carpet.

I note that the photographs submitted in evidence by the Landlords are not of particularly good quality. In spite of the poor quality, a stain on the carpet is evident in one photograph marked "stairwell & hall".

In determining the claim for compensation for cleaning the carpet I considered the condition inspection report that was completed at the start of the tenancy, which indicates there was one stain by the east window. In determining the claim for compensation for cleaning the carpet I also considered the condition inspection report that was completed at the end of the tenancy, which indicates the carpets were dirty and stained in various locations.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that in accordance with the legislation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection reports completed at the start and end of the tenancy were completed in accordance with the legislation, and the Tenants have not submitted sufficient evidence to convince me that the reports are inaccurate, I must rely on the reports.

I find that the Landlords submitted insufficient evidence to show that insurance costs increased as a result of the rental unit being vacant for an extended period. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates this submission. Although the Landlords submitted an invoice for a "personal lines package" of insurance, there is nothing on this invoice that helps me determine the insurance was needed because the rental unit was vacant. As the Landlords submitted insufficient evidence to show that insurance costs increased as a result of the rental unit being vacant for an extended period, I dismiss the Landlord's claim for insurance costs.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process.

I therefore dismiss the Landlords' claim for time spent preparing for these proceedings, as I do not have authority to award such costs.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$2,193.00, which includes \$1,450.00 in rent for July of 2015; \$378.00 for cleaning the unit; \$315.00 for cleaning the carpet; and \$50.00 for the fee to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to keep the Tenants' security deposit of \$725.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance of \$1,468.00. In the event 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: June 08, 2016

Residential Tenancy Branch