



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for 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 Landlord stated that on February 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and the evidence she submitted to the Residential Tenancy Branch with the Application were sent to the Tenants, via registered mail. The Tenant with the initials "T.H." acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenants did not submit any evidence to the Residential Tenancy Branch.

The Landlord and the Tenants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Neither party was permitted to testify regarding issues with the tenancy that were not directly related to the Landlord's claim for lost revenue.

Issue(s) to be Decided

Is the Landlord entitled to retain the Tenants' security deposit in compensation for lost revenue?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that is signed by the Landlord and both Tenants, which declares that:

- the tenancy began on June 03, 2015;
- the tenancy was for a fixed term, the fixed term of which ended on June 31, 2016; and
- rent of \$1,500.00 was due by the first day of each month.

The Landlord and the Tenants agree that:

- the terms of their tenancy agreement are outlined in their fixed term tenancy agreement;
- the Tenants paid a security deposit of \$750.00;
- sometime in January of 2016 the Tenants provided the Landlord with verbal notice of their intent to vacate the rental unit on March 01, 2016;
- sometime later in January of 2016 the Tenants provided the Landlord with verbal notice of their intent to vacate the rental unit on February 01, 2016
- the Tenants provided the Landlord with a forwarding address after the tenancy ended, via text message, although neither party recalls the date that address was provided; and
- the parties did not mutually agree to end the tenancy, in writing.

The Landlord stated that she received verbal notice from the Tenants regarding their intent to end the tenancy, at which time she was told they would be vacating on March 01, 2016.

The Tenant with the initials "R.L" stated that:

- after they gave verbal notice to end the tenancy on March 01, 2016 they also provided the Landlord with written notice of their intent to vacate;
- on January 02, 2016 this written notice was left inside the rental unit prior to the Landlord showing the unit to a potential new tenant;
- the written notice was missing when they returned home after the showing, so he presumes it was received by the Landlord;
- he thinks the written notice confirmed that they would be ending the tenancy on March 01, 2016, although he no longer has a copy of that written notice;
- he thinks the written notice asked the Landlord to sign the document to show she agreed to ending the tenancy;
- the Landlord did not return the document being referred to as the written notice;
- a person by the name of Dave, whom he believes acted as an agent for the Landlord on occasion, verbally advised the Tenants that they could end the tenancy;
- the Tenants ended the tenancy because there were a variety of deficiencies with the rental unit, which the Landlord did not repair;
- the deficiencies with the rental unit were reported to the Landlord by text message;
- he does not believe any of the text messages informed the Landlord that they would end the tenancy if the deficiencies were not repaired; and
- the rental unit was vacated on February 02, 2016.

The Landlord stated that:

- sometime in early January she located the letter that is being referred to as the written notice;

- she still has a copy of the letter;
- the letter did not specify the intended end date of the tenancy;
- the letter simply informed her that the Tenants intended to “break the lease”;
- the letter asked her to sign the document to ensure that the Tenants would not be responsible for “future rent”;
- the letter did not specify that the Tenants were ending the tenancy because of deficiencies with the rental unit;
- she does not believe “Dave, who is her boyfriend, told the Tenants they could end the tenancy early;
- she began advertising the rental unit after the Tenants gave her verbal notice that they were ending the tenancy;
- sometime in January of 2016 she located a new tenant;
- she is not certain, but she believes the Tenants vacated the rental unit on February 01, 2016;
- the tenancy agreement with the new tenant began on February 15, 2016;
- the Tenants did verbally report deficiencies with the rental unit;
- the reported deficiencies were repaired;
- the Tenants did not report any of the deficiencies by text message; and
- the Tenants did not inform her that they would end the tenancy if the reported deficiencies were not repaired.

The Landlord is seeking to retain the security deposit in compensation for lost revenue for the first two weeks of February.

The Tenants submit that the Landlord should not be able to retain the security deposit because the Tenants were told their security deposit would be returned if the rental unit was left in good condition and the utilities were paid.

The Tenants submit that they would have retained possession of the rental unit until February 15, 2016 if they had known the unit was not rented for February 01, 2016.

The Landlord stated that:

- she never told the Tenants she had found a new tenant for February 01, 2016;
- she advertised the rental unit for an availability date of March 01, 2016, as that is when the Tenants initially told her they would be vacating; and
- when she learned the Tenants were vacating on February 01, 2016 she was able to find a tenant who was willing to move in on February 15, 2016.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,500.00 by the first day of each month. I find that this was a fixed term tenancy that began on June 03, 2015, the fixed term of which was to end on June 31, 2016.

Section 45(2) of the *Residential Tenancy Act (Act)* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- is not earlier than one month after the date the landlord receives the notice;
- is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- 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.

(Emphasis added)

Even if I concluded that the Tenants gave the Landlord written notice to end the tenancy on March 01, 2016 or February 01, 2016, I would conclude that they did not give proper notice in accordance with section 45(2) of the *Act*, as that notice would have ended the tenancy on a date that is earlier than the date specified in the tenancy agreement as the end of the tenancy, which is not permitted.

Section 45(3) of the *Act* stipulates that if a landlord has failed 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. (Emphasis added)

Even if I accepted that the Landlord failed to repair a deficiency with the rental unit and I determined that deficiency was a breach of a material term of the tenancy agreement, I would find that the Tenants did not have the right to end the tenancy pursuant to section 45(3) of the *Act*. This conclusion is based on my finding that the Tenants have submitted no evidence to corroborate their submission that they informed the Landlord of various deficiencies by text message or to refute the Landlord's testimony that she was only verbally informed of any deficiencies.

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 sections 45, 46, 47, 48, 49 or 50 of the *Act*. There is no evidence that the Landlord gave notice to end this tenancy in accordance with sections 46, 47, 48, 49 or 50 of the *Act* and I have concluded that the Tenants did not give proper notice in accordance with section 45 of the *Act*. I therefore find that this tenancy did not end in accordance with 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. The written tenancy agreement did not require the Tenants to vacate the rental unit at the end of the fixed term. I therefore find that this tenancy did not end in accordance with section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. There is no evidence the parties agreed, in writing to end the tenancy. Even if a person who was acting on behalf of the Landlord told the

Tenants they could end this fixed term tenancy early I would find that this would not have served to end the tenancy in accordance with section 45(c) of the *Act*, as the agreement has to be in writing. I therefore find that this tenancy did not end in accordance with 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. I find that this tenancy ended when the Tenant vacated the rental unit in February of 2016, pursuant to 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. There is no evidence that the terms of the tenancy were incapable of being fulfilled. I therefore find that this tenancy did not end in accordance with section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that the tenancy is ended. There is no evidence that the director ordered that the tenancy has ended. I therefore find that this tenancy did not end in accordance with section 44(1)(f) of the *Act*.

I find that the Tenants did not comply with section 45(2) of the *Act* when they ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenants must compensate the Landlord for the lost revenue the Landlord experienced in the first half of February of 2016, in the amount of \$750.00. I find that the Landlord would not have experienced this loss if the Tenants had complied with their agreement to rent the unit until June 31, 2016.

Section 72(2)(b) of the *Act* stipulates that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I am authorized to deduct the amount owed from the security deposit even if the Landlord told the Tenants that she would return the security deposit if the rental unit was undamaged and the utilities were paid. I therefore find that the Tenants' submission that the Landlord told them their security deposit would be returned is entirely irrelevant.

Sections 24 and 36 of the *Act* stipulate that a landlord's right to claim against a security deposit or a pet damage deposit for damage to the residential property is extinguished if the landlord does not comply with various obligations regarding the completion of a condition inspection report. These sections do not extinguish a landlord's right to claim against a security deposit for loss of revenue. As this Application for Dispute Resolution relates to a claim for lost revenue, I find there is no need to consider whether the Landlord's right to claim against the security deposit has been extinguished.

In adjudicating this matter I have placed no weight on the Tenants' submission that they would have continued to occupy the rental unit until February 15, 2016 if they had known it was not being re-rented until that date. The compensation being awarded to

the Landlord is based on the Tenants' decision to end the fixed term tenancy prematurely and to vacate the rental unit on February 01, 2016.

The Landlord has an obligation to mitigate her losses as a result of the premature end to the tenancy by making reasonable efforts to find a new tenant. I find that she did so and was able to find a new tenant for February 15, 2016. The Landlord was under no obligation to inform the Tenants that they can retain possession of the rental unit until it is re-rented.

I find that the Landlord's application 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 \$850.00, which includes \$750.00 in lost revenue and \$100.00 for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit, in the amount of \$750.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$100.00. 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: September 23, 2016

Residential Tenancy Branch