



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, 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 unpaid rent; for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and documents he submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord cited a Canada Post tracking number that corroborates this statement.

The Landlord stated that the service address was provided to him by the Tenant, via text message, on August 05, 2016. The Landlord provided a copy of the text message in which the address was provided.

In the absence of evidence to the contrary I find that the aforementioned documents were served to the Tenant, via registered mail, and the hearing proceeded in the absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to compensation for unpaid rent, lost revenue, and costs associated to re-renting the rental unit?

Background and Evidence

The Landlord stated that:

- the Landlord and the Tenant agreed to enter into a tenancy agreement;
- the Landlord and the Tenant agreed that the tenancy would begin on July 27, 2016;
- the Landlord and the Tenant verbally agreed that the tenancy would be for a fixed term that ended on July 31, 2017;
- the Landlord and the Tenant agreed that the rent of \$1,080.00 would be due by the first day of each month;
- the Landlord agreed to reduce the rent for August by \$300.00, as the renovations to the unit were not completed by the scheduled start date;

- no rent was paid;
- the keys were provided to the Tenant on, or about, July 17, 2016;
- some property was moved into the rental unit in the latter portion of July of 2016;
- the Tenant paid a security deposit of \$540.00 on July 14, 2016;
- on July 14, 2016 the Landlord sent a written tenancy agreement and a two page addendum to the Tenant, via text message, which he asked her to sign and return;
- the Tenant did not return the tenancy agreement;
- on August 02, 2016 the Tenant sent him a text message in which she advised him that she no longer intended to live in the rental unit;
- all of the property was moved out of the rental unit by August 05, 2016 or August 06, 2016;
- on August 05, 2016 he advertised the rental unit for rent on two popular websites;
- the rental unit was re-rented on September 19, 2016; and
- the Landlord received \$400.00 in rent for September from the new tenants.

The Landlord is seeking compensation for unpaid rent/lost revenue for August and September of 2016.

The Landlord is seeking compensation for liquidated damages, in the amount of \$600.00. He based this claim on the addendum to the tenancy agreement that he sent to the Tenant on July 14, 2016, which declares, in part, that the Tenant will pay liquidated damages of \$600.00 if the Tenant gives notice to end the tenancy prior to the end of the fixed term of the tenancy.

The Landlord is seeking compensation, in the amount of \$100.00, for travel costs. This claim is based on mileage costs because the Landlord does not live near the rental unit and he needed to travel to the community to show the unit to the new tenant.

Analysis

The *Residential Tenancy Act (Act)* defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. On the basis of the undisputed evidence I find that:

- the Landlord and the Tenant entered into a tenancy agreement
- the tenancy was to begin on July 27, 2016;
- the tenancy was for a fixed term that ended on July 31, 2017;
- the Landlord sent a written tenancy agreement to the Tenant, which he asked her to sign;
- the Tenant did not return a signed tenancy agreement to the Landlord
- the Tenant agreed to pay rent of \$1,080.00 by the first day of each month; and
- the Landlord agreed to reduce the rent for August of 2016 by \$300.00.

As neither party had ended the tenancy by August 01, 2016, I find that the Tenant was obligated to pay rent of \$780.00 on August 01, 2016. As the Tenant entered into a tenancy agreement with the Landlord, I find that she was obligated to end this tenancy in compliance with section 45 of the *Act*.

Section 45(1) of the *Act* stipulates that a tenant may 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, is the day before the date that rent is due. Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by providing the landlord with written notice to end the tenancy on any day after the end of the fixed term tenancy on a date that is not earlier than one month after the date the Landlord received the notice, is the day before the date that rent is due.

I find that the Tenant failed to comply with section 45(2) of the *Act* when she provided the Landlord with notice to end this tenancy on a date that was earlier than the end of the fixed term of the tenancy.

Even if I had concluded that this was not a fixed term tenancy I would have found that the Tenant did not give proper notice to end the tenancy, as she did not give notice of her intent to end the tenancy on a date that is 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 a periodic tenancy on August 31, 2016 in accordance with section 45 of the *Act*, a tenant would have to provide written notice to their landlord on, or before, July 31, 2016, presuming rent was due by the first day of each month. As the Tenant did not give notice to end the tenancy until August 02, 2016, I find, pursuant to section 53 of the *Act*, that the earliest date that notice could have ended a periodic tenancy was September 30, 2016.

I find that the Landlord made reasonable efforts to locate a new tenant for September of 2016 and was able to find a new tenant for September 19, 2016. In spite of the efforts to mitigate his loss I find that the Landlord lost \$680.00 in revenue for September that he would not have experienced if the Tenant remained in the rental unit for the month of September. I therefore find that the Tenant must pay \$680.00 to the Landlord for this lost revenue.

Even if I accepted that the Tenant understood that she was entering into a fixed term tenancy agreement, I would dismiss the Landlord's claim for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant agreed to pay liquidated damages of \$600.00 if the Tenant ended the tenancy prematurely. I therefore dismiss the Landlord's claim for liquidated damages.

In determining there was insufficient evidence to conclude that the Tenant agreed to pay liquidated damages I was heavily influenced by the fact the Tenant did not sign the addendum to the tenancy agreement.

In determining there was insufficient evidence to conclude that the Tenant agreed to pay liquidated damages I was further influenced by the fact the Tenant did not initial the term relating to liquidated damages, although the addendum has an area beside this term for the parties to initial. Typically the reason parties initial a term in an agreement is to confirm that the parties have specifically agreed to this term.

The concept of liquidated damages is not commonly understood by all renters. Even if the Landlord and the Tenant discussed the issue of liquidated damages I cannot conclude that the Tenant fully understood and agreed to this term, given that she did not explicitly agree to the term, in writing.

I dismiss the Landlord's claim for travel costs. This is a business expense that must be absorbed by the landlords who opt to conduct business in a location that is not close to the landlord's residence.

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 \$1,560.00, which includes \$780.00 in unpaid rent from August of 2016; \$680.00 for lost revenue from September of 2016; and \$100.00 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 Tenant's security deposit of \$540.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,020.00. In the event 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.

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 28, 2016

Residential Tenancy Branch