



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPN, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, a monetary Order for unpaid rent or utilities, 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. At the hearing the Landlords withdrew all of these matters except the application to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that:

- on January 27, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant at the rental unit, via registered mail;
- the Canada Post notice of registered mail was located in the mail box of the rental unit on January 31, 2017;
- on January 31, 2017 the male Landlord placed the Canada Post notice of registered mail inside the Tenant's vehicle while she was sitting in the vehicle;
- the registered mail was not claimed by the Tenant; and
- the registered mail was returned to the Landlords.

In the absence of evidence to the contrary I find that the Application for Dispute Resolution and the Notice of Hearing were served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. As these documents were properly served to the Tenant, the hearing proceeded in the absence of the Tenant.

On February 08, 2017 the Landlords submitted 38 pages of evidence to the Residential Tenancy Branch, some of which were numbered 1 through 31 on the bottom right corner. The male Landlord stated that the documents numbered 1 through 31 were served to the Tenant with the Application for Dispute Resolution. In the absence of evidence to the contrary I find that these 31 pages were served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings. In the package of evidence submitted to the Residential Tenancy Branch on February 08, 2017 there were 3 additional pages numbered 23, 24, and 25 in the bottom right corner. The male Landlord stated that these three pages were personally served to the Tenant on January 31, 2017. In the absence of evidence to the contrary I find that these

3 pages were served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

In the package of evidence submitted to the Residential Tenancy Branch on February 08, 2017 there were 3 pages numbered 1, 2, and 3 at the bottom middle of the page. The male Landlord stated that these three pages were not served to the Tenant and they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The male Landlord stated that:

- this tenancy began on February 01, 2016;
- the tenancy was a fixed term tenancy, the fixed term of ended on January 31, 2017;
- the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month;
- the Tenant paid a security deposit of \$400.00;
- on December 31, 2016 the Tenant gave written notice of her intent to end the tenancy on January 31, 2017;
- on January 23, 2017 the Tenant sent the Landlords an email advising them she wished to withdraw her notice to end the tenancy;
- the Landlords told the Tenant that they would not allow her to withdraw the notice to end tenancy;
- the Landlords consulted with the Residential Tenancy Branch and, due to their concerns that the Tenant would not vacate the rental unit by January 31, 2017, they filed this Application for Dispute Resolution;
- on January 27, 2017 the Tenant informed the Landlords that she would be vacating the rental unit on January 31, 2017;
- the rental unit was vacated on January 31, 2017;
- the Tenant provided a forwarding address, in writing, when the condition inspection report was completed on January 31, 2017;
- the Landlords returned \$300.00 of the security deposit to the Tenant on January 31, 2017; and
- the Landlords retained \$100.00 of the security deposit in anticipation of being successful in their application to recover the fee for filing this Application for Dispute Resolution.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlords that required the Tenant to pay monthly rent of \$800.00 by the first day of each month.

On the basis of the undisputed evidence I find that on December 31, 2016 the Tenant gave the Landlords written notice of her intent to end the tenancy on January 31, 2017; that on January 23, 2017 the Tenant sent the Landlords an email advising them she wished to withdraw her notice to end the tenancy; and that the Landlords told the Tenant that they would not allow her to withdraw the notice to end tenancy.

As outlined in Residential Tenancy Branch Guideline #11, with which I concur, a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. With the consent of the party to whom it is given, but only with his or her consent, a notice to end tenancy may be withdrawn or abandoned prior to its effective date. As the Landlords did not agree to allow the Tenant to withdraw her notice to end the tenancy, I find that she did not have the right to withdraw her notice and that she was obligated to vacate the rental unit by January 31, 2017.

As the Tenant vacated the rental unit by January 31, 2017 I find that she complied with the notice to end tenancy that she served to the Landlords and that she did not, therefore, breach the *Residential Tenancy Act (Act)*, the Residential Tenancy Regulation, or the tenancy agreement in regards to the end of the tenancy.

Section 65 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord has suffered a loss as a result of the tenant failing to comply with the *Act*, the Residential Tenancy Regulation, or the tenancy agreement. As the Landlords have failed to establish that the Tenant failed to comply with the *Act*, the Residential Tenancy Regulation, or the tenancy agreement, I cannot conclude that the Landlords are entitled to a monetary Order.

Section 55 of the *Act* authorizes me to grant an Order of Possession if a tenant serves a notice to end tenancy but does not vacate the rental unit by the effective date of that notice. As the Tenant vacated the rental unit by the effective date of the notice to end tenancy she served to the Landlord, I would have concluded that the Landlords were not entitled to an Order of Possession.

As the Landlords have submitted insufficient evidence to establish the merits of their Application for Dispute Resolution, I dismiss their claim to recover the fee for filing this Application for Dispute Resolution.

Although the Landlords had the right to file an Application for Dispute Resolution prior to the effective date of a notice to end tenancy because they were concerned that the Tenant would not vacate the rental unit, they are not, in my view, entitled to compensation for the cost of the filing fee because the Tenant vacated the rental unit on

time. Filing an Application for Dispute Resolution prior to the effective date of a notice to end tenancy is often a prudent business decision when there is concern that a tenant will not vacate the rental unit by the effective date, as filing early will typically result in an earlier hearing date. When the tenant does vacate the rental unit in accordance with the notice to end tenancy, however, the cost of that prudence remains with the landlord.

Conclusion

The Landlords' application to recover the fee for filing this Application for Dispute Resolution is dismissed.

As the Landlords have failed to establish they have a right to the \$100.00 they have retained from the Tenant's security deposit, I find that they must return this \$100.00 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for \$100.00. In the event the Landlords do not comply with this Order, it may be served on the Landlords, 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 *Act*.

Dated: February 22, 2017

Residential Tenancy Branch