Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied 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 an Application for Dispute Resolution.

The Agent for the Landlord stated that on October 14, 2016 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that the Tenant's Application for Dispute Resolution, the Notice of Hearing, and 5 pages of evidence the Tenant submitted with his Application were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 03, 2017 the Landlord submitted 28 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on March 30, 2017. The Agent for the Landlord cited a Canada Post tracking number that corroborates this testimony. During the hearing the Agent for the Landlord checked the Canada Post website, which shows the package was delivered on March 31, 2017.

The Tenant stated that he did not receive the package that was delivered to his home on March 31, 2017. He stated that he lives with several other people at that residence and it is possible they accepted the package and did not give it to him.

Although I accept that the Landlord's 28 page evidence package was properly served to the Tenant, I also accept the Tenant's testimony that he has not received this package. As the Tenant has not received the package, I find that it would be unfair to accept these documents as evidence.

The Agent for the Landlord was advised that he may refer to any of his documents during the hearing. He was advised that if, during the hearing, he believed it was important for me to view one of his documents he may request an adjournment for the purpose of re-serving the Landlord's evidence to the Tenant. At the conclusion of the hearing the Agent for the Landlord stated that he does not require an adjournment for the purpose of re-serving evidence to the Tenant.

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

Is the Landlord entitled to compensation for damage to the rental unit and unpaid rent/lost revenue?
Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that:

- on September 14, 2016 they signed a fixed term tenancy agreement;
- the fixed term of the tenancy was to begin on October 01, 2016 and run to September 30, 2017;
- the Tenant agreed to pay monthly rent of $1,800.00 by the first day of each month;
- the Tenant paid a security deposit of $900.00;
- the rental unit was advertised as a unit that did not permit pets;
- on September 19, 2016 the Tenant provided the Landlord with a letter, in which he informed the Landlord he did not intend to move into the rental unit;
- the Tenant provided the Landlord with a forwarding address, in writing, on September 19, 2016; and
- the Tenant did not move into the rental unit.

The Tenant stated that prior to signing this tenancy agreement he told a female agent for the Landlord that he had a severe allergy to pets. The Agent for the Landlord stated that this allergy was not disclosed, in his presence, prior to signing the tenancy agreement.

The Witness for the Tenant stated that he lives in the residential complex; that he was familiar with the former occupants of this rental unit; and that they had a dog.

The Tenant submitted a copy of the letter he gave to the Landlord on September 19, 2017. In this letter the Tenant informed the Landlord that he has learned the previous occupant of the rental unit had a pet; that he has a very strong allergy to pets; and he is not moving into the unit because of his allergy.

The Agent for the Landlord stated that after receiving the letter dated September 19, 2017 the Landlord contacted the former occupant who confirmed, via email, that they did not have a pet. The Agent for the Landlord stated that the Landlord is not aware that the former occupant had a dog and they never observed any evidence of a pet when the unit was inspected.

The Tenant submitted a photograph of himself with a dog, an unknown female, and a female he stated was one of the former occupants of the rental unit. The Agent for the Landlord argued that if the Tenant had a severe allergy to dogs he would not have been that close to a dog. The Tenant stated that he can be in close proximity of dogs but he cannot come into contact with them.

The Agent for the Landlord stated that the rental unit was advertised on their company website and on a popular website. He stated that a new tenant moved into the rental unit on October 15, 2016 and, therefore, the Landlord is only seeking compensation for lost revenue for the first half of October of 2016.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which was to begin on October 01, 2016 and run to September 30, 2017, for which the Tenant agreed to pay monthly rent of $1,800.00 by the first day of each month.

On the basis of the undisputed evidence I find that on September 19, 2016 the Tenant provided the Landlord with a forwarding address, in writing, and he informed the Landlord, in writing, that he did not intend to move into the rental unit.

Section 44(1)(a) of the *Residential Tenancy Act (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.* There is no evidence that the Landlord gave notice to end this tenancy and I therefore cannot conclude that the Landlord ended this tenancy pursuant to section 44(1)(a) of the *Act.*

Section 45(1) of the Act authorizes a tenant to end a periodic 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 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. As this was not a periodic tenancy, I find that the Tenant did not have the right to end this tenancy pursuant to section 45(1) of the *Act.*

Section 45(2) of the *Act* authorizes a tenant to end 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. As the Tenant gave the Landlord written notice to end this tenancy on a date that was earlier than the date specified in the tenancy agreement as the end of the tenancy, I find that the written notice to Tenant gave to end this tenancy did not serve to end this tenancy in accordance with section 45(2) of the *Act.*

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.

On the basis of the testimony of both parties I find that this rental unit did not permit pets and that this term of the tenancy agreement was important to both parties. I therefore find that the term restricting pets was a material term of the tenancy agreement.

On the basis of the testimony of the Agent for the Landlord and the absence of any evidence to the contrary, I find that the Landlord was not aware that the former occupant of the rental unit was keeping a pet in the unit and the Landlord did not authorize the former occupant to have a pet in the unit. I therefore cannot conclude that the Landlord breached a material term of the tenancy agreement. As there is no evidence that the Landlord breached a material term of the tenancy agreement, I find that the Tenant did not have the right to end this tenancy pursuant to section 45(3) of the *Act.*

Even if I concluded that the Landlord had breached a material term of the tenancy agreement as a result of a pet being in the unit, I find that the Tenant would not have had the right to end this tenancy pursuant to section 45(3) of the *Act* because he did not give the Landlord a reasonable opportunity to correct the situation. I find it entirely possible that the Landlord could have resolved the Tenant's concerns regarding the pet by deeply cleaning the rental unit. As the tenancy ended prior to the Landlord being given the opportunity to address the Tenant's concerns, I find that he did not have the the right to end this tenancy pursuant to section 45(3) of the *Act.*

As the Tenant did not have the right to end this tenancy prior to September 30, 2017, pursuant to section 45 of the *Act*, I cannot conclude that the Tenant ended this tenancy 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 there is no evidence that this tenancy ended at the end of the fixed term of the tenancy, I cannot conclude that this tenancy ended 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 cannot conclude that this tenancy ended 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. I find that this tenancy ended when the Tenant abandoned the rental unit on September 19, 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. As there is no evidence that this tenancy agreement was frustrated, I cannot conclude that this tenancy ended 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 cannot conclude that this tenancy ended pursuant to section 44(1)(f) of the *Act.*

I find that the Tenant did not comply with the *Act* when he ended this tenancy in a manner that did not comply with section 45 of the *Act*. I find that the Landlord made reasonable attempts to locate a new tenant but was unable to do so until October 15, 2016. I find that the manner in which this tenancy ended resulted in the Landlord experiencing lost revenue for the period between October 01, 2016 and October 14, 2016 and I find that the Landlord is entitled to compensation for 50% of the monthly rent, which is $900.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As I have concluded that this tenancy ended on September 19, 2016 and the Landlord received the Tenant's forwarding address, in writing, on that date, I find that the Landlord was required to comply with section 38(1) of the *Act* by October 04, 2016. As the Landlord did not file an Application for Dispute Resolution until October 11, 2016 and the Landlord did not return the security deposit, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not

comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,000.00, which includes $900.00 in lost revenue and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenant has established a monetary claim, in the amount of $1,900.00, which includes double the security deposit and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two claims I find that the Landlord owes the Tenant $900.00 and I grant the Tenant a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: April 11, 2017

Residential Tenancy Branch