



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied 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 on November 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the tenancy agreement submitted with the Application were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence 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 and they were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct spelling of the female Tenant's surname, as was provided by her at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to keep all or part of the security deposit in compensation for this tenancy ending prematurely?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on July 01, 2016
- the parties signed a fixed term tenancy agreement, the fixed term of which was to expire on June 30, 2017;

- the Tenants agreed to pay monthly rent of \$1,600.00 by the first day of each month;
- the Tenants paid a security deposit of \$800.00; and
- the rental unit was vacated on October 31, 2016.

The female Tenant stated that in early October of 2016 a contractor informed them that a building on the residential property was being converted into a secondary suite. The Landlord stated that he informed the Tenants of this construction sometime in the middle of September of 2016, which the Tenants deny.

The parties agree that they did not discuss the possibility of a secondary suite being built on the property when this tenancy began.

The female Tenant stated that on October 05, 2016 the Tenants send the Landlord an email informing him that they objected to the Landlord building a secondary suite on the residential property. The Landlord stated that he did not receive this email.

The female Tenant stated that on October 07, 2016 the Tenants sent the Landlord an email, in which they informed the Landlord they were ending the tenancy on October 31, 2016. She stated that in this email the Tenants informed the Landlord that they were ending the tenancy because the Landlord was building a secondary suite on the residential property.

The male Tenant read out the email of October 07, 2016 during the hearing. In the email the Tenants allegedly inform the Landlord that they would not have entered into a tenancy agreement if they knew there was a secondary suite on the property and that they think the construction of the secondary suite gives them cause to terminate the tenancy as a result of a breach of a material term.

The Landlord stated that he received an email from the Tenants on October 12, 2016 in which they informed him that they were ending the tenancy on October 31, 2016. He stated that the Tenants did not explain why they were ending the tenancy in this email. He stated that the email read out by the male Tenant does not sound like the email he received, although he did not have the email with him at the time of the hearing.

Neither party submitted copies of the aforementioned emails as evidence.

The Landlord stated that after the rental unit was vacated he decided to move back into the rental unit and that he moved into the rental unit sometime in the middle of November of 2016.

The Landlord stated that his claim for \$800.00 includes compensation for lost revenue for the month of November. He stated that it also included a claim for compensation for moving his property out of the rental unit when this tenancy began and then moving it back into the unit after the tenancy ended.

Analysis

Section 45(2) of the *Residential Tenancy Act (Act)* authorizes a tenant to 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.

As this tenancy was a fixed term tenancy, the fixed term of which ended on June 30, 2017, I find that the Tenants did not have the right to end this tenancy, pursuant to section 45(2) of the *Act*, on October 31, 2016.

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.

Even if I was satisfied that having a secondary suite on the residential property was a breach of a material term of the tenancy, I would conclude that the Tenants did not have the right to end this tenancy pursuant to section 45(3) of the *Act*. This decision is based on my conclusion that there is insufficient evidence to show that the Tenants ended the tenancy before they provided the Landlord with a reasonable opportunity to correct the breach before they ended the tenancy.

In my view, the Tenants should have informed the Landlord, in writing, that they considered the construction of the secondary suite to be a breach of a material term of the tenancy agreement AND that they would be ending the tenancy on the basis of that breach unless they received written confirmation that the secondary suite would not be rented to a third party. In the event the Landlord did not provide that written confirmation within a reasonable time the Tenants may have had the right to end this tenancy pursuant to section 45(3) of the *Act*.

As the Tenants did not provide the Landlord with a reasonable opportunity to correct an alleged breach of a material term of the tenancy agreement, I find that they did not have the right to end this tenancy pursuant to section 45(3) of the *Act*.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord experiences a loss as a result of the tenant breaching the *Act*. In many circumstances I would find a landlord is entitled to compensation for lost revenue if a tenant ends a fixed term tenancy prematurely.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize

the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the lost revenue he experienced in November of 2016.

I find that by moving back into the rental unit in November of 2016, rather than advertising for a new tenant, the Landlord eliminated any possibility of mitigating the losses he experienced as a result of a premature end to the tenancy. I find it entirely possible that if the Landlord had advertised for a new tenant he would have located a tenant for November of 2016; he would not have lost any revenue for that month; and he would not have experienced the inconvenience of moving back into the unit.

The Landlord has failed to establish a right to retain the Tenants' security deposit of \$800.00 and I therefore dismiss his claim to retain that deposit.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I dismiss his claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish a right to retain the Tenants' security deposit, I find that the \$800.00 deposit must be returned to them. I therefore grant the Tenants a monetary Order for \$800.00. 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: May 12, 2017

Residential Tenancy Branch