



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenant gave written notice to end the tenancy; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The landlord's documentary evidence was sent by registered mail and therefore in accordance with s. 90(a) of the *Act* the tenant is deemed to have been served five days after this was sent. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2016. Rent for this unit was \$700.00 per month due on the 1st of each month. The landlord provided a copy of the tenancy agreement in documentary evidence. This agreement states the following terms:

The tenancy begins on August 01, 2016 and this shall be the anniversary date. The term is to run from year to year and the tenancy continues until the landlord or tenant gives proper notice to terminate.

Or

The tenancy is for a fixed term, beginning on the 1st day of August, 2016 and ending on the N/A day of

The landlord testified that the tenancy was a fixed term and was to run year to year as stated in the tenancy agreement. The tenant gave written notice to end the tenancy in a letter dated September 30, 2016. This ended the tenancy on October 31, 2016. The landlord assumed the tenant vacated on that date.

The landlord testified that he started to advertise the unit in the local paper and on internet sites. A new tenant was not found until January, 2017 and the new tenancy was started on February 01, 2017. The landlord testified that this unit is located on an island off of Vancouver Island and it can be challenging to rent in the winter months.

The landlord provided bank statements showing a payment for the newspaper advert dated November 29 and December 08, 2016. The landlord has also provided emails in repose to adverts he placed on an internet site going forward from October 18, 2016. The landlord provided a copy of an email from the new tenant and a copy of the new tenancy agreement showing the unit was re-rented for a tenancy starting February 01, 2017.

The landlord testified that as the tenant ended the tenancy before the first fixed term of a year the landlord seeks a loss of rent for November and December, 2016 and for January, 2017 to a total amount of \$2,100.00. The landlord also seeks to recover the filing fee of \$100.00 from the tenant.

The tenant disputed the landlord's claims. The tenant testified that there was not a fixed term agreement and the landlord breached the agreement by not completing a move in condition inspection report with the tenant at the start of the tenancy. The tenant testified that he never really lived in the unit; he paid a month's rent up front and then one other month's rent. The tenant did move some belongings into the unit but was never given the opportunity to view the unit properly as the previous tenant was still living there.

The tenant testified that he found some deficiencies in the unit, including issues with the windows which would not open properly and could have become a safety issue and due to the landlord operating a business on the ground floor. The tenant testified he was not informed off this business and was not happy with. Due to these issues the tenant gave written notice to end the tenancy.

The landlord testified that the tenancy agreement clearly states it is a year to year tenancy. The tenant was sent an email on August 23 and this asked the tenant to fill in the inspection report and forward it to the landlord. The windows did open and close. There was a minor issue with a spring on some windows which was a warranty issue which has been resolved.

The landlord disputed the tenant's claim that he did not look at the unit prior to renting it; the tenant did look at the unit and it was not occupied by the former tenant as that tenant had passed away. The tenant was asked to look at the tenancy agreement and he has initialled the page that contains the information about it being a fixed term tenancy. The tenant signed the agreement on June 14, 2016.

The tenant asked the landlord why he did not take advantage of several tenants that the tenant sent his way from the adverts the tenant listed on an internet site. The landlord responded that two of the tenants sent to him looked at the unit and were interviewed by the landlord but they declined to rent the unit; two other tenants sent by the tenant did not show up.

Analysis

In determining this matter concerning the term of the tenancy agreement and whether or not it was a fixed term agreement, I was guided by *Derby Holdings Ltd. V. Walcorp Investments Ltd.*

1986, 47 Sask R. 70 and Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift, (1982) 36 A.R. 193, in which the Court found that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant.

I have therefore turned my mind to the wording of the agreement which clearly states that the tenancy began on August 01, 2016 and this shall be the anniversary date. The term is to run from year to year and the tenancy continues until the landlord or tenant gives proper notice to terminate. The next section also filed in by the landlord provides the same start date of the tenancy but does not provide an end date.

However, clearly this agreement was for at least a one year fixed term and this term does not alter just because the landlord failed to put in an end date of July 31, 2017. There is no mention on the agreement that this is a month to month tenancy. The tenant has initialled this page of the agreement and should therefore have been clear about the terms of the agreement before signing the document.

I find the contra proferentem rule does not apply in these circumstances and that the tenancy agreement stands as written.

I therefore refer the parties to s. 45(2) of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

It is therefore my decision that the tenant breached the tenancy agreement by giving notice to end the tenancy before the tenancy could be legally ended after the first year. With this in mind I have considered whether or not the landlord took reasonable steps to re-rent the unit in a timely manner. I am satisfied from the evidence before me that the tenant and the landlord both advertised the unit seeking new tenants. A new tenant could not be found until January, 2017 and the unit was re-rented for February 01, 2017. Consequently, I find in favor of the landlord's application to recover a loss of rent for three months to a total amount of **\$2,100.00**. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

The tenant testified that he was entitled to end the tenancy because the landlord had breached the agreement by not completing the move in inspection report and because of deficiencies in the unit and a business being run below the unit; I will address these issues separately.

It is not a breach of the tenancy agreement if the landlord fails to complete a move in condition inspection report with the tenant at the start of the tenancy. The only implications concerning this matter is that the landlord extinguishes his right to file a claim to keep the security deposit if a move in inspection is not completed with the tenant pursuant to s. 24(2) of the *Act*.

With regard to deficiencies in the unit the tenant has recourse under the *Act* to file an application for repairs to be made to the unit under either s. 32 of the *Act* or s. 33 of the *Act* if the repair is considered to be an emergency repair. Faulty windows would not be considered sufficient reason for terminating a tenancy under s. 45(3) of the *Act* which states:

(3) 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.

With regard to the tenant's testimony concerning the landlord's business in a unit below the tenants; this is not sufficient reason to end the tenancy, The business was not operated from the tenant's unit but in a different unit and therefore has no connection to this tenancy.

As the landlord's application has merit, the landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,200.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: June 05, 2017

Residential Tenancy Branch