



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MNR, MNSD, FF
TENANT: OLC, MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent and lost rental income, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit, for the Landlord to comply with the Act, regulations and tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on August 31, 2017, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on September 18, 2017 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent or lost rental income and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent or lost rental income and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?
5. What other considerations are there?

Background and Evidence

This tenancy started on November 1, 2016 as a fixed term tenancy for 1 year with an expiry date of October 31, 2017. Rent was \$1,500.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$750.00 on November 1, 2016.

The Landlord said the Tenant moved out of the rental unit at the end of August, 2017 without proper notice and Tenant broke the fixed term tenancy agreement by moving out early. The Landlord continued to say that he has put rental unit up for sale and had an accepted offer with the sale conditions to be removed by July 7, 2017. The Landlord said that he and the Tenant agreed that if the house sold the Tenant would move out by September 1, 2017 and the new owners would take possession September 1, 2017. The Landlord said the sale fell through and he thought the tenancy would continue. The Landlord continued to say the Tenant did not pay the rent for August, 2017 and he sent a 10 Day Notice to End Tenancy for unpaid rent on August 11, 2017 by registered mail to the Tenant. The Landlord said the Tenant did not respond and did not pay the rent. Following this the Landlord said the Tenant moved out without proper notice. The Landlord said he requested the Tenant's forwarding address and received it by text message on August 29, 2017. Further the Landlord said he did not agree to end the tenancy on September 1, 2017 if the house did not sell. The Landlord said he submitted the listing agreement which shows the house had a tenant and the tenancy ended on October 31, 2017. The Landlord said he is requesting the unpaid rent for August, 2017 in the amount of \$1,500.00 and lost of rental income for September and October, 2017 in the amount of \$1,500.00 for each month in the total amount of \$3,000.00. The Landlord said the house is not rented or sold and is empty at his time.

The Landlord also requested to retain the Tenant's security deposit of \$750.00 as partial payment of the unpaid rent and he requested to recover the filing fee from the Tenant.

The Tenant said that she had a verbal agreement with the Landlord as of June 29, 2017 that the house was selling and she would move out by September 1, 2017. The Tenant submitted text messages to support this text conversation. The Tenant continue to say the Landlord informed her the sale did not go through but the Tenant understood that they still agreed that she was to move out at the end of August, 2017. The Tenant said she understood that she did not have to pay the rent for August, 2017 and that the Landlord was fine with her moving out at the end of August, 2017. The Tenant said she did not get anything in writing as she thought a verbal agreement with the Landlord was good enough. The Tenant submitted a number of pages of text messages that support her testimony that the Landlord had agreed to end the tenancy in September, 2017. The Tenant said it was her choice to move out of the rental unit at the end of August, 2017, but she was under the understanding it was agreed to by the Landlord.

The text message from the Landlord to the Tenant on August 6, 2017 says "You and me have a lease for one year which ends in September." Further the Landlord text the Tenant on July 30, 2017 "Is it confirmed that you are moving end of August or not?" The Tenant replied to the Landlord "Yes I have found a good house. I'll be moving in a couple of waves and a bit at a time. And this house will be clean and ready by August 31, 2017." Further the Tenant text "Also a family I know is looking for a rental for September 1. Do you think you would want to meet with them". The Landlord replied "Send me their number who is interested to rent the place."

The Tenant said these text messages show the Landlord know she was moving out at the end of August and he had agreed to end the tenancy then.

The Tenant continued to say she has applied for compensation of 2 months rent in the amount of \$3,000.00 as the Landlord ended the tenancy before the end of the fixed term and the Tenant requested the return of her security deposit of \$750.00 and to recover the filing fee.

The Parties were given an opportunity to settlement this dispute themselves. The Landlord offered to settle for \$3,000.00 the Tenant offered to settle for \$1,500.00. Both Parties declined the others offers.

The Tenant said in closing that her application was a result of the Landlord's application and she believes there was a misunderstanding and the applications should wash each other out. Further the Tenant said she left the rental unit in good condition and she believes the Landlord had agreed to end the tenancy on September 1, 2017 whether or not the rental unit was sold.

The Landlord said in closing he only agreed to end the tenancy if the house sold and it did not so he is requesting that the full amount of rent be paid up to the end of the fixed term tenancy in the amount of \$4,500.00. The Landlord said he did not verbally agree to end the tenancy and the written tenancy agreement contract should be upheld.

Analysis

I have reviewed the submitted evidence and the testimony given at the hearing. It appears that in June and July, 2017 the Landlord and the Tenant discussed ending the tenancy on September 1, 2017 which was before the expiry date on the tenancy agreement. The Landlord said it would facilitate a sale of the house and the Tenant said she would move whether or not the house sold. As the Landlord did not pursue to end the tenancy with a Notice to End Tenancy or a written Mutual Agreement to End Tenancy; I find the Landlord did not end this tenancy. The Tenant said it was her choice to move out in August, 2017, therefore I find the Tenant ended the tenancy before the expiry date on the tenancy agreement.

Consequently with regard to the August, 2017 rent of \$1,500.00 section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper written notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent. Further the Tenant had full possession of the rental unit for the month of August, 2017. Consequently I find the Tenant is responsible for the unpaid rent for August, 2017 in the amount of \$1,500.00.

As well it appears from the text messages that the Landlord and the Tenant had a verbal agreement to end the tenancy on September 1, 2017, which does not comply with the Act because it is not written, but it does show the intent of the parties to end the tenancy. Further these communications happened in June and July, 2017 and when the house sale fell through on July 7, 2017. Further on July 30, 2017 the Tenant texted the Landlord with new potential renters for the unit which shows the Tenant was trying to mitigate any losses the Landlord may have. The Landlord has not provided any evidence that he has tried to rent the unit since the Tenant moved out and he said the rental unit is still empty.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant **must show how they mitigated or minimized the loss.**

When a landlord is requesting compensation for lost rental income as a result of a fixed term tenancy ending earlier than the expiry date, the Landlord is obligated to try to mitigate any losses by renting the unit as quickly as possible. If the landlord is selling the property and chooses not to rent the unit, a tenant is not responsible for the lost rental income. The Tenant provided the Landlord with a potential replacement tenant which shows the Tenant tried to mitigate any losses for the Landlord. The Landlord did not provide any evidence that shows he is trying to rent the unit. Normally this could be done by submitting copies of rental ads or a property management agreement. Further, the Landlord said the unit is empty at this time.

Consequently, I find that the Landlord has not proven that he has tried to mitigate any lost rental income that he may have suffered. As a result, I find the Landlord has not established grounds to prove he has mitigated or minimized his lost rental income. It is not enough to rely on the terms of a fixed term tenancy agreement only. A landlord must take action to prevent a loss or the Landlord does not meet the criteria to be awarded compensation for lost rental income. As a result, I find the Landlord has not established grounds to be awarded the lost rental income for September and October, 2017, in the amount of \$3,000.00. I dismiss the Landlord's claim of \$3,000.00 for lost rental income.

With regard to the Tenant's application, I find the Tenant is the one who chose to end the tenancy at the end of August, 2017, resulting in the terms of the tenancy agreement being broken. This is a breach of the tenancy agreement and therefore I dismiss the Tenant's application for compensation of the equivalent of two months' rent in the amount of \$3,000.00.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

	Unpaid rent:	\$ 1,500.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$ 1,600.00
Less:	Security Deposit	\$ 750.00	
	Subtotal:		\$ 750.00
	Balance Owing		\$ 850.00

As the Tenant was unsuccessful in this matter, I order the Tenant to bear the \$100.00 cost of the filing fee for her application that she has already paid.

Conclusion

A Monetary Order in the amount of \$850.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: November 22, 2017

Residential Tenancy Branch