



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$10,222 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the landlord and the tenant SDSG. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant SDSG on August 11, 2017.

The landlord testified he was not able to serve JAS. As a result the claim against JAS is dismissed with liberty to re-apply.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

There is a dispute between the parties as to whether SDSG is a party to a fixed term tenancy agreement. The landlord produced a written tenancy agreement that provided that the tenancy would start on October 17, 2017. The box indicating it is a month to month tenancy was checked. The box underneath it indicating that it was a fixed term for 15 months ending on February 1, 2018 is also checked. There is a signature of the landlord and JAS above the fixed term. There is a signature allegedly on SDSG below. The rent is set at \$2750 per month. The tenant(s) paid a security deposit of \$1350 at the start of the tenancy.

The respondent SDSG testified he did not sign a fixed term tenancy agreement as alleged by the landlord. He testified that in October he agreed and signed a month to month tenancy agreement that was to run for 3 months on a trial basis. However, he denies signing a fixed term tenancy agreement.

SDSG vacated the rental unit on February 7, 2017. His mother (Witness #1) at the request of her son moved his belongings out of the rental property on February 17, 2017. They asked JAS if there was anything further they had to do and JAS assured them that SDSG was not a tenant on the tenancy agreement. SDSG never returned to the rental unit.

The landlord testified he was advised by neighbors that the tenants moved out without notice on March 31, 2017. He further testified he attempted to re-rent the rental unit without success and lost 3 months rent.

The landlord makes the following monetary claims:

- \$8250 for loss of rent for the months of April, May and June.
- \$535.35 for unpaid utilities to the City of West Kelowna
- \$354 for BC Hydro
- \$693 to repair a damaged floor
- \$240 for clean up
- \$150 to fix holes and drywall.

Analysis:

The applicant has the burden of proof to present sufficient evidence to establish his/her/their claim on a balance of probabilities.

After carefully considering all of the evidence I determined the landlord failed to prove that SDSG signed a fixed term tenancy agreement for the following reasons:

- I determined there is a difference between the signature of SDSG on page 2 and page 6 of the fixed term tenancy and his signature on his Drivers License, the Violation Ticket Change of Address form dated September 25, 2016, the Application to Adjourn a Hearing dated June 5, 2017, and Notice of Change of Hearing dated June 30, 2017.
- I do not accept the explanation of the landlord that the tenant's signature on authorization to change of counsel is different. To the extent it might be different the difference can be explained by the fact the tenant recently broke his arm.
- The landlord relies on a pre-tenancy condition inspection report. The first page of that document indicates the legal name of the tenant is JAS. SDSG is not identified as a tenant on page 1 of that document. The last page of that document indicates JS agreed that the report fairly indicates the condition of the rental unit. However, the Condition Inspection Report indicates it is signed by the Tenant SDSG. His signature is suspect. I accept the evidence of the tenant's Witness #2 that SDSG was with him all day and did not participate in the inspection.
- The landlord failed to provide any evidence that SDSG paid any rent. SMSG testified he was not working at the time and paid rent to JAS through work.
- The Application for Dispute Resolution alleges the tenants including SDSG vacated the rental unit at the end of March without giving notice to the landlord. I accept the evidence of the tenant and Witness #1 that SDSG that he vacated the rental unit in February and she removed all of his belongings around the middle of February. The allegation that SDSG vacated the rental unit at the end of March has not been proven.

The Tenant testified he agreed to a month to month tenancy that was valid for 3 months. He testified JAS had that agreement in his possession and is no where to be found. The landlord relies on the fixed term tenancy referred to above and did not give evidence as to a month to month tenancy. I determined the landlord failed to prove that the respondent SDSG signed the fixed term tenancy agreement. I further determined that it was not open for me to determine that SDSG was a month to month tenant as SDSG testified it expired after 3 months and the landlord relies on the fixed term tenancy. Neither party is arguing that a month to month tenancy existed as of March 2017. The landlord retains the right to claim against JAS on the basis of the fixed term tenancy and the landlord may a remedy against JAS.

Further, the landlord failed to present sufficient evidence to prove he has mitigated his loss. He testified he advertised the rental unit but failed to provide particulars as to his efforts and corroborating evidence to support this oral testimony.

With respect to each of the landlord's claims against SDSG I find as follows:

- a. I dismissed the claim of \$8250 for 3 months unpaid rent as the landlord failed to prove SDSG signed the fixed term tenancy agreement or was a tenant. Further, the landlord failed to prove he mitigated his loss.
- b. I dismissed the claim of \$535.35 for unpaid utilities to the City of West Kelowna as the landlord failed to prove SDSG was a tenant.
- c. I dismissed the claim of \$354.18 for unpaid electricity as the landlord failed to prove SDSG was a tenant.
- d. I dismissed the claim of \$693 for repair the damaged floor as the landlord failed to prove SDSG was a tenant and the work has not been done.\
- e. I dismissed the claim of \$240 for the cost of cleanup and garbage disposal and \$150 to fix the holes and paint the drywall as the landlord failed to prove SDSG was a tenant.

Conclusion

In conclusion I dismissed the landlord's against SDSG without out liberty to re-apply.

I dismissed the claim against JAS with liberty to re-apply as JAS was not served and did not take part in this hearing.

This decision is final and binding on the parties.

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: February 13, 2018

Residential Tenancy Branch