Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT and FFT

Introduction

This hearing was convened in response to the Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 05, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 19 pages of evidence submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 21, 2018 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenant as evidence for these proceedings. As the evidence was not served to the Tenant as evidence for these proceedings, it was not accepted as evidence for these proceedings.

All of the documents accepted as evidence have been reviewed.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act* because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental

unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Is the Tenant entitled to recover an unlawful rent increase?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2013 and that it ended on September 20, 2017;
- at the end of the tenancy the Tenant was required to pay monthly rent of $1,280.00 by the first day of each month;
- the Landlord served the Tenant with a Two Month Notice to End Tenancy, which required her to vacate the rental unit by August 31, 2017; and
- the Notice to End Tenancy declared that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

The Tenant submitted a copy of a text message, dated June 29, 2017, in which the Tenant offered to pay an extra $100.00 “for rent” in exchange for the Landlord allowing the Tenant to remain in the unit until the end of September. The parties agree that the Landlord accepted this offer and that the additional $100.00 was paid sometime in August of 2017. The parties agree that the Tenant did not pay the normal rent of $1,280.00 for September as she was entitled to one month’s free rent, pursuant to section 51 of the *Act*, because she was served with a Two Month Notice to End Tenancy.

The Tenant contends the $100.00 was an unlawful rent increase and she is seeking to recover the $100.00. The Landlord contends that the $100.00 was not a rent increase as it was offered by the Tenant and not requested by the Landlord. The parties agree that the Tenant was not served with a Notice of Rent Increase in regards to this additional $100.00.

The Tenant stated that rental unit was advertised for rent on a popular website in September of 2017. The Tenant submitted an internet advertisement for the rental unit, dated September 20, 2017.

The Landlord stated that when he served the Two Month Notice to End Tenancy his parents planned on moving into the rental unit. He stated that his parents subsequently changed their minds and did not want to move into the rental unit. The Landlord acknowledged that the rental unit was advertised for rent in September of 2017 and that the unit was re-rented in October of 2017.

Analysis

On the basis of the undisputed evidence I find that during the latter portion of this tenancy the Tenant was required to pay monthly rent of $1,280.00.

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required her to vacate the rental unit on August 31, 2017.

On the basis of the undisputed evidence I find that on June 29, 2017 the Tenant offered to pay an additional $100.00 to the Landlord in exchange for the Landlord allowing her to remain in the unit until the end of September of 2017.

The *Ac*t defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include a security deposit; a pet damage deposit; or a fee prescribed under section 97 (2) (k) of the *Act.* As there is no dispute that the Tenant paid the additional $100.00 in exchange for the right to retain possession of the rental unit for an additional month, I find that it must be considered "rent".

Section 42(1) of the *Act* stipulates that a landlord must not impose a rent increase for at least 12 months after the date on which the rent was first payable for the rental unit or, if the tenant's rent has previously been increased, the effective date of the last rent increase. As the additional $100.00 in rent that was paid by the Tenant was offered by the Tenant and was not "imposed" by the Landlord, I find that the Landlord was not obligated to comply with section 42 of the *Act.*

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing. As the additional $100.00 in rent that was paid by the Tenant was offered by the Tenant and was not "imposed" by the Landlord, I find that the Landlord was not obligated to comply with section 43 of the *Act.*

Section 42(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase. As the additional rent of $100.00 that the Landlord collected did not contravene the rules regarding rent increases, I dismiss the Tenant's application to recover the $100.00 in rent she voluntarily paid to the Landlord.

On the basis of the undisputed evidence I find that the rental unit was re-rented in October of 2017 and that it was not occupied by the Landlord or a close family member of the Landlord after the Tenant vacated the unit on September 20, 2017.

Section 51(2)(a) of the Act stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As I have found that the Landlord or a close family member of the Landlord has not taken reasonable steps to move into the rental unit and/or has not occupied the rental unit for a period of at least six months, I find that the Landlord must pay the Tenant $2,560.00, which is the equivalent of double the monthly rent.

I find that the Tenant's application has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

I find that the Tenant has established a monetary claim of $2,660.00, which includes $2,560.00 in compensation pursuant to section 51(2)(a) of the *Act* and $100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of $2,660.00. In the event that 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 the 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: May 02, 2018

Residential Tenancy Branch