



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR-L, FF

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on May 4, 2018, wherein the Landlords sought an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee.

The hearing was conducted by teleconference on June 28, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to monetary compensation for unpaid rent and recovery of the filing fee?

Background and Evidence

The Landlord, Z.L. (hereinafter referred to in the singular) testified that the parties entered into a one year fixed term tenancy agreement. which was signed on April 4, 2018, and provided for a term from April 7, 2018 to April 7, 2019. The rental unit is in the basement of an investment property owned by the Landlord.

The Tenants moved into the rental unit on April 7, 2018.

The Landlord stated that the Tenants were not happy with the condition of the rental unit and although he tried to discuss with them what they could do, the Tenants stated that they wanted to move out.

The parties then met and decided that the tenancy would end. On April 13, 2018 the parties signed a Mutual Agreement to End Tenancy on Form #RTB-8. A copy of the Mutual Agreement was provided in evidence and which provided that the tenancy was to end on April 13, 2018.

The Landlord stated that pursuant to the mutual agreement he returned the Tenants' security deposit on April 13, 2018 by cash; the Tenant, M.J., signed a document confirming the receipt of the funds.

That same day the parties then entered into a Short Term Rental Agreement providing that the Tenants would be credited their first month's rent of \$1,150.00, less \$38.00 per day of occupation up to and including April 19, 2018. The agreement further provided that they would pay \$48.00 per day as of April 20, 2018 and that in all cases the tenancy would end no later than May 1, 2018. The Landlords and both Tenants signed and dated this agreement.

The Landlord stated that despite their agreement to move out, the Tenants refused to move from the rental unit and have not been paying rent. In the within action the Landlords sought an Order of Possession and a Monetary Order for the unpaid rent.

In response to the Landlords' claims, the Tenant, E.D., testified as follows.

E.D. conceded that the fixed term tenancy ended. He stated that there was a sewer flood in the rental unit rendering the unit uninhabitable. He further confirmed that the parties met and agreed to end the tenancy pursuant to the Mutual Agreement to End Tenancy.

E.D. stated the parties then entered into the Short Term Rental Agreement, dated April 13, 2018. He further confirmed that pursuant to this Agreement the latest date of moving out was May 1, 2018.

When I asked E.D. why they did not vacate the rental unit as agreed, E.D. then stated that he had a verbal agreement with the Landlords to continue the rental. When I asked if they have paid rent in accordance with this alleged verbal agreement, E.D. stated that they have not paid rent to the Landlord as "he has not been around", and E.D.'s phone was stolen.

E.D. confirmed the amounts set out in the Short Term Rental Agreement were payable, but they needed to be credited their first month's rent.

M.J. also testified. He stated that they agreed to move out because of a major sewage flood in the rental unit. He confirmed that they agreed to the terms of the Short Term Rental Agreement.

M.J. stated that they did not move out because they could not find alternate accommodation.

M.J. stated that they received the deposit back, but not the first months' rent.

M.J. then stated that he had a verbal agreement with the Landlord that they could stay if they cleaned up the rental unit. M.J. stated that they cleaned the rental unit, did all the renovations and have stayed.

In response to the Tenants' allegations that they entered into a verbal agreement that they could renovate and repair the rental unit and stay beyond May 1, 2018 the Landlord stated that was not true.

The Landlord also confirmed that he has the same phone number as when the tenancy began.

The Landlord further confirmed that he has texted the Tenants about rent and they have not responded.

The Tenant E.M. stated that he did not receive any texts as his phone was stolen. He also stated that the Tenant, M.J., received texts about removing garbage, but nothing about rent.

When I put it to the Tenant that it was incongruous that they claimed they had no way of reaching the Landlord to pay rent, yet confirmed they received text messages from him, E.D. stated that M.J. could receive text messages but not send them out because he hadn't paid his bill.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I find that the parties entered into a one year fixed term tenancy commencing April 7, 2018. I find that the tenancy was frustrated by the flooding of the rental unit. As *Residential Tenancy Branch Policy Guideline 34—Frustration* provides:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

As such, pursuant to section 44(1)(e) of the *Act*, I find that the parties are relieved of their obligations under the fixed term tenancy agreement.

The parties entered into a binding Mutual Agreement to End the Tenancy, following which they entered into a Short Term Rental Agreement. I accept the Landlord's evidence that this Short Term Rental Agreement was entered into to facilitate the Tenants finding alternate accommodation due to the unforeseen circumstances of the flood in the rental unit. The terms of the Short Term Rental Agreement provided as follows:

- The amount the Tenants paid for the first month, namely \$1,150.00 would be credited to the Tenants.
- For each day of occupation until April 19, 2018 the Tenants were to pay \$38.00 per day.
- For each day of occupation following April 19, 2018 the Tenants were to pay \$48.00 per day.
- The date of moving out was to be no later than May 1, 2018.

I find that the parties are bound by the terms of the Short Term Rental Agreement. I further find that the parties agreed to end this short term tenancy as of May 1, 2018; accordingly, and pursuant to section 44(1)(c), I find the tenancy ended on May 1, 2018.

I do not accept the Tenants' evidence that the parties entered into a further tenancy. The Tenants allege they had a verbal agreement with the Landlord to continue the tenancy past May 1, 2018. The Landlord disputes this claim. The Tenants also allege they were to be paid for repairing the rental unit. Again, the Landlord disputes this claim. Where the evidence of the parties diverges, I prefer the evidence of the Landlord. I found him to be forthright and consistent in his testimony. Conversely, I found the Tenants' testimony to lack credibility.

The evidence before me confirms that at all material times the parties confirmed their dealings in writing. I find it likely that had the parties agreed to a further tenancy, the terms would have been similarly reduced to writing.

I also find the Tenants' explanation for why they did not pay rent to be not credible. The Tenants initially stated they had no means of contacting the Landlord. Later in their testimony they confirmed he communicated with them via text messages. While it may be the case they could not respond by text message due to failure to pay their cellular bill, they could have called the Landlord on the number from which he was sending text messages. I find it more likely that they simply refused to pay rent.

I therefore grant the Landlord's request for an Order of Possession. This Order will be effective two days after service on the Tenants. Should the Tenants fail to move from the rental unit as required the Landlord may file and enforce the Order in the B.C. Supreme Court.

I also find the Landlord is entitled to monetary compensation for unpaid rent, calculated in accordance with the Short Term Rental Agreement as follows:

\$38.00 per day for the time period April 7, 2018 to April 19, 2018 \$38.00 x 13 days = \$494.00	\$494.00
\$48.00 per day for the time period April 20, 2018 to date of hearing June 28, 2018 \$48.00 x 70 days = \$3,360.00	\$3,360.00
Total	\$3,854.00
<i>Less credit for first month paid</i>	<i>\$1,150.00</i>
Total	\$2,704.00

As the Landlord has been successful in his application I also award him recovery of the \$100.00 filing fee for a total of **\$2,804.00** in monetary compensation.

Conclusion

Pursuant to sections 44 and 55 of the *Residential Tenancy Act* the Landlord is granted an Order of Possession effective two days after service on the Tenants.

Pursuant to sections 26, 67, and 72, the Landlord is granted a Monetary Order in the amount of **\$2,804.00**. This Order must also be served on the Tenants and may be filed and enforced in the B.C. Provincial Court Small Claims Division.

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 29, 2018

Residential Tenancy Branch