Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that sometime in November of 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The male Tenant stated that these documents were personally served to him on December 10, 2017. As the male Tenant acknowledged receiving these documents, I find that they have been served in accordance with section 89 of the *Residential Tenancy Act (Act*).

On November 20, 2017 the Landlord submitted a copy of the tenancy agreement and a monetary Order Worksheet to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant with the Application for Dispute Resolution. The male Tenant acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On December 06, 2017, January 25, 2018, June 19, 2018, and June 25, 2018 the Landlord submitted several pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via courier, on July 02, 2018. He stated that these documents were sent to the forwarding address provided by the Tenant at the end of the tenancy and they have not yet been returned to the Landlord.

The Agent for the Landlord stated that the aforementioned evidence was not served to the Tenant prior to July 02, 2018 because “life got in the way”.

The male Tenant stated that in July of 2018 they were no longer residing at the forwarding address they provided to the Landlord and that they never received the evidence that was allegedly couriered to their previous address.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than fourteen days before the hearing. As the Tenant has not received any of the evidence the Landlord allegedly couriered to the Tenant on July 02, 2018, I find that the evidence does not comply with Rule 3.14, as it was not received by the Tenant within 14 days of the hearing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that I may refuse to consider evidence if there has been an unreasonable delay in serving the evidence. As the Landlord did not serve the evidence to the Tenant when it was submitted to the Residential Tenancy Branch; the Landlord did not take reasonable steps to ensure the evidence was served to the Tenant at least 14 days prior to the hearing; and the Tenant has not yet received the evidence, I find there was an unreasonable delay in serving the evidence.

In determining that the evidence should not be accepted, I find that the Landlord has failed to establish that there were exceptional circumstances that prevented him from serving and filing the evidence in accordance with the Rules of Procedure. I do not find that “life got in the way” sufficiently explains why evidence cannot be served in a timely manner.

I therefore decline to accept any of the Landlord’s evidence that was served to the Tenant on July 02, 2018.

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.

All of the documents accepted as evidence has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent or utilities and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on December 01, 2016;
- the tenancy was for a fixed term, the fixed term of which ended on November 30, 2017;
- the Tenant agreed to pay monthly rent of $2,100.00;
- the Tenant paid a security deposit of $1,050.00;
- the Tenant paid a pet damage deposit of $1,050.00;
- in September of 2017 the Tenant was served with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit on October 31, 2017;
- the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel the One Month Notice to End Tenancy;
- a hearing was scheduled for December 06, 2017 to consider the merits of the Tenant's application to cancel the One Month Notice to End Tenancy;
- at the hearing on December 06, 2017 the Arbitrator dismissed the Application for Dispute Resolution, as the rental unit had been vacated;
- the Landlord received a forwarding address for the Tenant on November 12, 2017;
- the keys to the rental unit were returned on November 12, 2017.

During the hearing the parties were asked to refer to the tenancy agreement. After referring to the tenancy agreement the male Tenant stated that rent was due on the 31st day of each month. The Agent for the Landlord was unable to refer to the tenancy agreement, as he did not have it with him at the time of the hearing.

The male Tenant stated that the rental unit was vacated on October 31, 2017. The Agent for the Landlord stated that the rental unit was vacated on November 04, 2017.

The male Tenant stated that at the hearing on December 06, 2017 the Agent for the Landlord testified that the rental unit was vacated on October 31, 2017. The Agent for the Landlord denies this submission.

The male Tenant provided the file number for the matter that was heard on December 06, 2017, which appears on the first page of this decision. I have reviewed that decision, in which the Arbitrator recorded that the Landlord testified that the rental unit was vacated on October 31, 2017.

The male Tenant stated that they moved out of the rental unit prior to December 06, 2017 because the Landlord told them they were required to vacate. He acknowledged that the Residential Tenancy Branch told the Tenant they were not required to vacate the rental unit prior to the date of the hearing. He stated that they opted to remove prior to December 06, 2017 because they were concerned they would be unable to find a new home if they were unsuccessful at the hearing on December 06, 2017.

The Agent for the Landlord stated that the rental unit was not advertised for rent until December 01, 2017 and that a new tenant was found for December 15, 2017. He stated that they did not immediately advertise the rental unit after it was vacated because the flooring needed to be replaced and there was a significant amount of garbage left in the yard. He stated that the need to repair/clean the rental unit was exacerbated by the fact the Landlord does not live in the same city as the rental unit.

The male Tenant stated that the only garbage left in the yard was beside the garbage cans and that the flooring in the unit was left in reasonable condition at the end of the tenancy.

The Landlord is claiming compensation of $429.19 for unpaid utilities. The Landlord and the Tenant agree that the Tenant was required to pay for water, sewer, and garbage. The Landlord has based this claim on a utility bill for $267.68 that was received and an estimate of $147.42. The male Tenant stated that the Tenant would be willing to pay $400.00 for the utility claim. The Agent for the Landlord stated that the Landlord would be willing to accept $400.00 for the utility claim.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 47(1) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy for a variety of reasons. On the basis of the undisputed evidence I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by October 31, 2017.

Section 47(4) of the *Act* authorizes a tenant to dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. On the basis of the undisputed evidence I find that the Tenant filed an Application for Dispute Resolution in which they applied to cancel the One Month Notice to End Tenancy that is the subject of these proceedings.

When a tenant files an Application for Dispute Resolution to dispute a One Month Notice to End Tenancy, the Notice to End Tenancy is suspended until the date of the hearing, which in this case was December 06, 2017. As the Tenant disputed the One Month Notice to End Tenancy that is the subject of these proceedings, the Tenant had neither the right nor the obligation to vacate the rental unit on the basis of this Notice.

Section 45(2) of the Act authorizes a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and 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.

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on November 30, 2017. I therefore find that the Tenant did not have the write to end this tenancy, pursuant to section 45 of the *Act*, until November 30, 2017.

As the Tenant did not have the right to end this tenancy, pursuant to section 45 of the *Act,* and the Tenant did not have the right or obligation to vacate the rental unit prior to December 06, 2017 on the basis of the One Month Notice to End Tenancy that was served to the Tenant, I find that the Tenant was obligated to pay rent for November of 2017.

On the basis of the tenancy agreement submitted in evidence, I find that rent was due, in advance, on the last day of each month. I therefore find that the Tenant was obligated to pay rent for November, in the amount of $2,100.00, by October 31, 2017.

Regardless of whether the rental unit was vacated on October 31, 2017, as the Tenant contends, or it was vacated on November 04, 2017, I find that the rental unit was occupied on October 31, 2017 and that the Tenant was, therefore, obligated to pay rent on that date.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the full amount of their lost revenue for November of 2017.

In concluding that the Landlord did not mitigate the full amount of their lost revenue, I was heavily influenced by the Agent for the Landlord's testimony that the rental unit was not advertised for rent until December 01, 2017. I find that the rental unit was not advertised in a timely manner.

If I accepted the Landlord's evidence that the unit was not vacated until November 04, 2017, I find that the unit should have been advertised on November 04, 2017. If I accepted the Tenant's evidence that the unit was vacated on October 31, 2017, I find that the unit should have been advertised on October 31, 2017. In any event I find that the delay in advertising the rental unit was unreasonable.

Had the rental unit been advertised either on October 31, 2017 or November 04, 2017, I find it entirely possible that it would have been re-rented for November 15, 2017, in which case the Landlord would only have experienced lost revenue of $1,050.00 for November of 2017. As the Landlord did not mitigate the full amount of her lost revenue, I find that she is only entitled to compensation of $1,050.00.

In adjudicating the claim for lost revenue I have placed no weight on the Landlord's submission that the rental unit needed cleaning/repair prior to renting. I have placed no weight on this submission because there is no evidence, such as photographs, that corroborates the Agent for the Landlord's testimony that the unit required cleaning/repair or that refutes the male Tenant's testimony that cleaning/repairs were not required.

In adjudicating the claim for lost revenue I have placed no weight on the Landlord's submission that there was a delay in cleaning/repairing the rental unit because the Landlord lives in a different city that the rental unit. I find that this is an inconvenience

the Landlord must endure if the Landlord opts to conduct business remotely and any consequences of that choice cannot negatively impact the Tenant.

As the Landlord and the Tenant mutually agreed to settle the utilities claim for $400.00, I find that the Tenant must pay the Landlord $400.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,550.00, which includes $1,050.00 for lost revenue for November of 2017, $400.00 for utilities, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain $1,550.00 from the Tenant's security/pet damage deposit in full satisfaction of this monetary claim.

As the Landlord has not established a claim to the full amount of the security/pet damage deposit I grant the Tenant a monetary Order for the balance $550.00. In the event 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 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 *Act*.

Dated: July 06, 2018

Residential Tenancy Branch