



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation pursuant to a mutual agreement to end tenancy. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that both parties had exchanged their respective hearing documents and evidence upon each other. I have admitted and considered all of the documents submitted by both parties.

Issue(s) to be Decided

Are the tenants entitled to further compensation from the landlord pursuant to their mutual agreement to end tenancy?

Background and Evidence

The two year fixed term tenancy started on November 1, 2016 and was set to expire on October 31, 2018. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00. The tenants were required to pay rent of \$2,500.00 on the first day of every month.

The landlord entered into a contract to sell the property during the tenancy and the new owners indicated a preference to not have tenants. The landlord and the tenants reached a mutual agreement to end the tenancy. The parties emailed each other with respect to the terms of the mutual agreement and a final version of the mutual agreement was signed by both parties on November 15, 2017.

Below I have copied an excerpt from the mutual agreement that provides for compensation payable to the tenants by the landlord:

Both the Landlords and the Tenants hereby agree that the Landlord will give the Tenant \$2500 (equal to 1 month rent) and \$500 moving expenses to the Tenants as compensation for the Tenants to move out on or before February 28, 2018 (before the lease end date).

The Tenants will continue paying the rent until the date they move out, which will mark the new adjusted end date of the lease as mutually agreed by both the Landlords and the Tenants

Date at Vancouver BC, November 15, 2017

Both parties were in agreement that the tenants paid rent in the full amount for the month of December 2017 and moved out of the rental unit on December 18, 2017. The landlord provided the tenants with compensation of \$2,500.00 and \$500.00, plus a full refund of their deposits, for a total payment of \$5,500.00.

By way of this Application, the tenants seek to recover rent they paid for the days of December 19 – 31, 2017 in the amount of ~~\$1,148.00~~ **\$1,048.00 plus recovery of the \$100.00 filing fee**. The tenants pointed to the highlighted paragraph in the compensation section of the mutual agreement provided above to substantiate their position. The tenant argued that the mutual agreement only required the tenants to pay rent up to the day they moved-out and since they moved out December 18, 2017 they are not responsible to pay rent for the days after December 18, 2018 and they should be refunded the rent they paid for days after December 18, 2017.

The landlord's agent submitted that the landlord compensated the tenants what was agreed upon in their mutual agreement and there is no provision for pro-rating rent. The landlord permitted the tenants to move out early with a view to giving them flexibility, but the landlord did not anticipate or agree to refunding rent for the days after the tenants moved out. The landlord pointed out that the tenancy agreement requires the tenants to pay rent on a monthly basis, not a daily basis, and that term was not modified by the parties.

On another matter, the landlord requested that the tenants pay the landlord \$100.00 for the move out fee that the landlord was charged when title to the property was transferred. The tenant was agreeable to having this amount deducted from their award.

Analysis

Section 44(1)(c) of the Act permits parties to end a tenancy by way of a written agreement between the parties. In this case, the parties had a fixed term tenancy that was set to expire October 31, 2018 but the parties entered into a written agreement to end the tenancy earlier than that date. Where parties enter into a written agreement to end a tenancy early, it is not uncommon for one party to compensate the other party as an incentive to enter into such an agreement as happened in this case. The parties were not in dispute that the tenancy ended early by mutual agreement and the tenants were entitled to compensation to end the tenancy early. Rather, the issue under dispute concerns the total amount of compensation payable to the tenants based on the interpretation of one of the terms of their agreement.

Upon careful review of the subject term, I find that a reasonable person would read the subject term and note sufficient reference to the tenants remaining liable to pay rent up until a particular date, the day they moved out, which also brings the tenancy to an end on that particular date. Since the parties were in agreement that the tenancy would come to an end on the day the tenants moved out, as opposed to the end of a month, it further stands to reason that the tenants would not be required to pay rent for days after the tenancy ended. I find the landlord's expectation that the tenants would be liable to pay rent for a full month, regardless of the day the tenants moved out, would contradict the parties' agreement that the tenancy end date would be the day the tenants moved out. As to the landlord's argument that the tenancy agreement required the tenants to pay rent on the first, I note that the tenancy agreement also provided that the tenants would pay rent on the first day of every month up to October 31, 2018 and I find the mutual agreement, as it is written, serves to modify all of these terms.

In light of the above, I find the tenant's interpretation of the subject term in the mutual agreement is accurate and I grant the tenant's request to recover rent paid to the landlord for the days of December 19 – 31, 2017 in the amount of ~~\$1,148.00~~ **\$1,048.00**. I further award the tenants recovery of the \$100.00 filing fee they paid for this application.

In keeping with the parties' agreement during the hearing, I deduct \$100.00 from the tenants' award to compensate the landlord for the strata move-out fee paid by the landlord.

Based on all of the foregoing, the tenants are provided a Monetary Order in the net amount of ~~\$1,148.00~~ **\$1,048.00** to serve and enforce upon the landlord.

Conclusion

The tenants were awarded compensation totalling ~~\$1,248.00~~ **\$1,148.00** including the filing fee. The tenants authorized a deduction of \$100.00 from their award to compensate the landlord for the \$100.00 strata move-out fee. Accordingly, the tenants are provided a Monetary Order in the net amount of ~~\$1,148.00~~ **\$1,048.00** to serve and enforce upon the landlord.

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: August 29, 2018

Date Corrected: September 25, 2018

Residential Tenancy Branch