



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, in accordance with section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on October 24, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package but did not know on what date. I find that the tenant was deemed served with this package on October 29, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, in accordance with section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and ended on November 1, 2018. This was originally a fixed term tenancy agreement set to end on August 31, 2018. As of September 1, 2018, monthly rent in the amount of \$1,445.00 was payable on the first day of each month. A security deposit of \$695.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant testified that she did not provide her forwarding address in writing to the landlord.

The tenant testified that she e-mailed the landlord with her one month notice to vacate the subject rental property on September 26, 2018. The landlord testified that he recalls receiving notice of the tenant's intention to leave the subject rental property but did not recall on what date specifically. I permitted the tenant 24 hours to upload evidence regarding her one month notice to end tenancy. The tenant entered into evidence an e-mail dated September 26, 2018 which provided the landlord with one month's notice to end tenancy. The tenant also entered into evidence an e-mail from the landlord to the tenant dated September 26, 2018 acknowledging her notice to end tenancy.

The landlord's wife testified that she immediately started putting advertisements on websites in an effort to re-rent the subject rental property at the rate of \$1,445.00. The landlord's wife testified that the first record she has of an advertisement placed for the subject rental property was September 29, 2018.

The landlord testified that he was unable to find a tenant for November 2018, December 2018 or January 2019 despite lowering the rental rate. The landlord testified that on or around January 10, 2019 he put the property up for sale instead of trying to rent it out.

The landlord testified that prior to the end of the fixed term tenancy agreement he asked the tenant if she would like to stay on and the tenant agreed. Both parties agreed that a new tenancy agreement was not signed. The landlord argued that the effect of clause 19 of the tenancy agreement was to renew all terms of the tenancy agreement when the

tenant informed him that she would stay on, including a new one-year fixed term agreement with an end date of August 31, 2019. The landlord argued that in giving her notice to end tenancy prior to August 31, 2019, she breached the tenancy agreement.

Clause 19 of the tenancy agreement states:

“Unless the Landlord, or any subsequent Landlord, or their immediate family, wishes to move in to the Property, upon giving written notice no later than 60 days before the expiration of the term of this Lease, the Tenant may renew this Lease for an addition term. All terms of the renewed lease will be the same except for the amount of the rent. The amount of the Rent will be increased by the maximum amount allowed under British Columbia law. If the Landlord, or any subsequent Landlord, or their immediate family, wishes to move in to the Property, the Tenant shall vacate the Property at the end of the term.”

The landlord is seeking to recover three months' rent from the tenant for November 2018- January 2019, for a total of \$4,335.00.

The tenant argued that since she did not sign a new tenancy agreement, her tenancy reverted to a month to month tenancy and she provided notice to end tenancy in accordance with the *Act*. Therefore, she should not be responsible for the landlord's inability to re-rent the subject rental property.

Analysis

Residential Tenancy Policy Guideline 30 (PG 30) states that effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- The tenancy agreement is a sublease agreement; or
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.

Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.

Section 44(3) of the *Act* states that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that

date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 14(2) of the *Act* states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find that section 19 of the tenancy agreement does not act to create a new one year fixed term tenancy when a tenant agrees to stay at the subject rental property past the original end date of the fixed term tenancy. Section 19 of the tenancy agreement permits the tenant to enter into a new tenancy agreement in certain circumstances; however, in this case, the landlord and tenant did not sign a new agreement. Based on the testimony of both parties I find that the tenant did not agree to amend the term of the tenancy agreement and did not sign a new tenancy agreement. Therefore, pursuant to section 44(3) of the *Act*, I find that the landlord and tenant are deemed to have renewed the tenancy agreement as a periodic tenancy on the same terms.

I find that the landlord received the tenant's one month notice to end tenancy via e-mail on September 26, 2018 as that is the date he responded to the tenant's one month notice to end tenancy. While e-mail does not conform to the service requirements of section 88 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act*, in accordance with section 71 of the *Act* as the landlord confirmed receipt of the notice.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- and
- (b) 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.

I find that the tenant provided notice to end tenancy in accordance with section 45 of the *Act*. I therefore find that the tenant is not responsible for the loss of rental income suffered by the landlord. I therefore dismiss the landlord's application without leave to reapply.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that since the tenant has not provided the landlord with her forwarding address in writing, the landlord is not yet obligated to return the tenant's security deposit. As I have dismissed the landlord's application for damages and compensation, I find that he is not entitled to retain the tenant's security deposit.

Conclusion

I dismiss the landlord's application without leave to reapply.

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 25, 2019

Residential Tenancy Branch