



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the application. The landlord had applied by way of the Direct Request process, which was adjourned to this participatory hearing.

The landlord also applied for an order permitting the landlord to serve the tenants with the Application for Dispute Resolution and supporting documents and evidence by email, which was granted by the director.

The landlord and one of the named tenants attended the hearing, and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

The other named tenant did not attend the hearing, and the landlord testified that he was served with the hearing package by registered mail on March 22, 2019 and has provided proof of such service. I find that the tenant who did not attend the hearing has been served in accordance with the *Residential Tenancy Act*. I also find that the tenant who attended the hearing was served in accordance with the Order of the director.

During the course of the hearing the landlord advised that the tenants have vacated the rental unit and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2018. Rent in the amount of \$3,700.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,850.00 which is still held by the landlord. The tenancy agreement, a copy of which has been provided for this hearing also specifies a pet damage deposit in the amount of \$1,850.00, however the landlord did not collect any part of the pet damage deposit. The rental unit is a house with a suite that has a separate entrance.

The landlord further testified that the tenants are spouses, and the husband moved out in early February, 2019. The wife gave notice to end the tenancy on February 15, 2019 effective March 15, 2019. A copy has been provided for this hearing which also permits the landlord to keep the security deposit in partial satisfaction of rent due for March, 2019. She moved out on March 16, 2019, and the other half of rent for March has not been paid. The landlord also claims loss of rental revenue for April, 2019 and testified that a new tenancy begins on May 1, 2019. The new tenants applied to rent on April 5, 2019, and the tenancy agreement was signed on April 8, 2019.

The landlord advertised through a company on February 20, 2019, however that company would not allow the landlord to advertise as well. The company had a slow turn-around time to advertise, so the landlord switched to another company and signed a contract with them on March 3, 2019. That company and the landlord both advertised, and the landlord's advertisement was placed on Craigslist on March 5, 2019.

During the tenancy the tenants sublet the basement suite without the landlord's knowledge, and the landlord did not give that person any consideration because the landlord assumed that if he was paying \$1,600.00 per month, he would not be able to afford \$3,700.00 for the full rent. The landlord had no involvement in finding the person, and having a subtenant might impact a future tenancy, so the landlord asked the tenant to ask that person to move out as well.

The landlord claims \$1,850.00 for March rent and \$3,700.00 for loss of rental revenue for April, 2019.

The tenant testified that the landlord had shown the other suite to the tenants at the beginning of the tenancy and said that the tenants could rent it out, so they did.

The tenant's husband was abusive, and the tenant went to a safe-house in November, 2018. Her spouse moved out of the rental unit in December or January and the tenant didn't have the money for a security deposit on another rental unit, but got on the list for BC Housing and had to go somewhere, so the tenant moved back in. Her spouse continued to hide in the yard in his van or around the corner, and smash on the front door wanting in. He also texted many times saying he was coming back, and the intrusions were constant. The Crisis Centre personnel told the tenant that due to family violence the tenant would only have to give 28 days notice to end the tenancy.

The tenant also testified that the landlord only showed the rental unit once, on March 11, 2019.

Analysis

Firstly, I refer to the *Residential Tenancy Act* regarding a tenant's notice to end a tenancy for family violence (underlining added):

45.1 (2) A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming:

(a) if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant;

(3) A tenant under this section may end a fixed term 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.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In this case, the tenant did not complete the form required to end the tenancy, or any confirmation that the tenant is eligible to end the fixed term tenancy. However, I have

reviewed the tenancy agreement, and it is clear that rent was payable on the 1st day of each month. It also shows that the parties had agreed to a fixed term but there is no end date. Therefore, I find that the tenancy was on a month-to-month basis. A tenant may give notice to end a month-to-month tenancy before the date rent is payable and is effective at the end of that rental period. The tenant gave the landlord notice to end the tenancy on February 15, 2019 effective March 15, 2019, which is contrary to the *Act*. Therefore, I find that the tenant's notice must be effective on March 31, 2019, and the tenants are required to pay rent to that date. However, there is no argument that the tenants owe half a month's rent in the amount of \$1,850.00 and the tenant has agreed in writing that the landlord may keep the \$1,850.00 for the other half. In a month-to-month tenancy, the landlord may not claim loss of rental revenue unless extenuating circumstances exist, such as the tenants leaving the rental unit uninhabitable. There is no evidence of that, and I dismiss the landlord's application for loss of rental revenue.

Since the tenant has agreed in writing that the landlord keep the security deposit, I order the landlord to keep it in partial satisfaction of unpaid rent for March, 2019 and I grant a monetary order in favour of the landlord for \$1,850.00. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,850.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,950.00.

This order is final and binding and may be enforced as against either tenant.

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: April 15, 2019

Residential Tenancy Branch