



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD FFT
Landlord: MNRL-S FFL

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant originally filed their application March 06, 2019 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application (\$100) - Section 72.

The landlord originally filed their application May 02, 2019 for Orders as follows;

1. A monetary Order for Unpaid rent – holding security deposit – Section 67
2. An Order to keep the security deposit as set off – Section 38
3. An Order to recover the filing fee for this application (\$100) - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute to no avail, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

The landlord claims they did not receive the tenant's application and evidence. The tenant provided proof of registered mail service to the landlord. I found the tenant served the landlord with their document evidence in accordance with the Act, however the landlord failed to claim it and it was returned to the tenant. It must be known that failure to accept mail is not a basis for review consideration. The landlord's agent confirmed knowledge of the tenant's application in this matter and I found they were aware of the case against them. The tenant confirmed receiving the landlord's

application in this matter by registered mail, signed and accepted by the tenant's roommate. The landlord's agent was not aware if the landlord had provided evidence, however relies on the tenancy agreement submitted to this proceeding by the tenant. The hearing proceeded on the merits of the claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for loss of revenue?
Is the tenant entitled to the return of the security deposit, and in what amount?

Background and Evidence

The undisputed evidence in this matter is as follows. The parties agreed the subject tenancy began August 01, 2018 as a written fixed-term tenancy agreement. The payable monthly rent was \$1295.00. At the outset of the tenancy the landlord collected a security deposit of \$647.50 which they retain in trust. The parties agreed the fixed term tenancy agreement was stated as being six months (with a calculated effective date of January 31, 2019), however with a *stated end date* of February 28, 2019. The contractual agreement states that the parties agreed by their initials that at the end of the fixed term the tenant would (must) vacate.

The tenancy ended January 31, 2019 upon the tenant vacating. The tenant claims they did as they were required to do by the contract. The landlord claims that regardless of the contract stating the term being for "six months", the contract end date was stated as February 28, 2019 following a verbal agreement with the tenant that the end date should fall at the end of February. Therefore the landlord claims the tenant vacated early without notice to the landlord and the landlord is thus owed the payable rent for the month of February 2019 in the amount of \$1295.00. the tenant testified there was no verbal agreement to alter the end date. They substituted the date to January 31, 2019 to reflect the true intention of the term as being for six months.

The parties agreed that, at the outset and the end of the tenancy there was no condition inspection scheduled or conducted by the landlord.

The tenant testified that after they vacated the rental unit they provided the landlord with an e-transfer address for the return of their security deposit on February 01, 2019. They further testified they had not provided the landlord with a written forwarding address anytime prior to filing for dispute resolution. The tenant argued that an e-transfer

address should suffice given that it was the method by which the rent was paid. The landlord confirmed they did not receive a forwarding address from the tenant, however somehow obtained it, enabling them to advance their application in this matter.

Tenant's application

The tenant seeks the return of double their security deposit in accordance with Section 38 of the Act in the amount of \$1295.00.

Landlord's application

The landlord seeks unpaid rent for February 2019 in the amount of \$1295.00.

Analysis

*A copy of the Residential Tenancy Act, Regulations and other publications are available at **www.gov.bc.ca/landlordtenant**.*

On preponderance of the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

I find that the tenancy ended January 31, 2019 and the landlord was not provided a written forwarding address by the tenant in accordance to **Section 38(1)** of the Act. Therefore the *doubling* provisions provided within **Section 38(6)** of the Act do not apply. As a result I find the tenant is not entitled to the doubling provisions afforded by the Act.

Landlord's claim

I find that a tenant who signs a fixed term tenancy agreement / contract is responsible for the rent to the end of the fixed term. However, in this matter the parties are at odds in respect to the length of the term as the contract stipulates the term is for six months however the end date is stipulated as the end of the seventh month. I find that in the absence of sufficient evidence confirming that the parties verbally contracted outside of the express written terms in the contract, I must find that the written contract must prevail.

I find that the contractual tenancy agreement is an instrument of the landlord. I find the legal principle, or rule, of *contra proferentem* aptly applies when interpreting an ambiguity in the contract. This rule is often stated as follows:

Contra proferentem

Where there is any ambiguity in the contractual provision it will be interpreted in the manner least favourable to the maker or author of the contract. It is also often said that the contractual provision will be “strictly construed against the maker”.

In this matter the interpretation of the term for the fixed length of time of the contract must fall against the author of the contract, the landlord. Therefore, I find that the tenancy agreement states *the fixed length of time of the term is for six months* and not the provision upon which the landlord relies as the interpretation of seven months. Effectively I find the fixed term ended January 31, 2019. The tenant was required / obligated to vacate at the end of the fixed term and they acted on that obligation. I find the tenancy ended January 31, 2019 and that the tenant does not owe rent beyond this date. As a result of all the above I must **dismiss** the landlord’s claim for unpaid rent for the month of February 2019.

I find that in the absence of *move in* and *move out* condition inspections by the landlord **Sections 24 and 36** of the Act prescribe that their right to make a claim against the security deposit for damage to the unit are extinguished. As the landlord’s claim in this matter has been dismissed and they have not advanced another qualifying claim against the tenant; and, they are precluded from making a claim for damage to the rental unit, it is only appropriate that I return to the tenant their original security deposit of \$647.50.

Having been in part successful in their application I find the tenant is entitled to recover their filing fee of \$100.00, for a total entitlement of **\$747.50**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$747.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant’s application is granted. The landlord’s application is dismissed, without leave to reapply.

This Decision is final and binding.

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 26, 2019

Residential Tenancy Branch