



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR OLC RP MNRL OPM

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent in the amount of \$1,050.00 pursuant to section 67.

And the tenant’s for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

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 parties confirmed that each had received the other’s notice of dispute resolution and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenant’s Claim

The parties both testified that the tenant vacated the rental unit on July 27, 2019. At the hearing, the tenant withdrew her claim, as the relief sought was no longer needed. She stated that she has yet to receive her security deposit back from the landlord.

The matter of the deposit will be addressed in my reasons on the landlord's application below.

Preliminary Issue – Landlord's Order of Possession

As the tenant no longer occupies the rental unit an order of possession is no longer necessary. Accordingly, I decline to award the landlord an order of possession as against the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount of \$1,050.00 for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 1, 2018 and ending August 31, 2019. Prior to entering into this agreement the parties were governed by a short term rental agreement, two weeks in duration. Monthly rent was \$900.00. The tenant paid the landlord a security deposit of \$500.00. The landlord retains this deposit.

At the hearing, the parties made lengthy submissions regarding the condition and legality of the rental unit. I understand that such issues are the subject of a hearing before the Small Claim Division of the British Columbia Provincial Court. These details of the condition and legality are only relevant to the determination of this matter in so far as give context to the fact that the parties agreed to end the tenancy before the end of the fixed term.

On June 9, 2019, the parties entered into a Mutual Agreement to End Tenancy (the "**Mutual Agreement**"). The landlord entered a copy of the Mutual Agreement into evidence signed by the tenant, and the landlord's agent CH. The tenant agreed to vacate the rental unit by 12:00 pm on June 30, 2019.

The landlord entered an email chain between her and the tenant from the days preceding the signing of the Mutual Agreement. The emails discuss the details of the terms of the Mutual Agreement. This email chain contains the bulk of the evidence relevant to this application

On June 5, 2019, the landlord wrote:

However, I very much appreciate your willingness to consider moving out earlier, so please consider the following terms of my new offer to you and please let me know if you will sign a mutual agreement BY 6pm Pacific Time Sunday June 9, 2019, on the following terms:

1. You move out entirely on or before June 30th by 1pm and you pay no rent for the month of June; OR
2. If you move out entirely on or before June 23 by 1pm, you pay no rent for June AND I pay you an additional \$200;
3. Your damage deposit of \$500 is paid to you after an inspection after you have moved out and no damage is found - following the procedures set out in the BC RT Act.

On June 8, 2019, the landlord sent an email which reiterated the offer. She wrote:

[Tenant], I've had a chance to read the BC Residential Tenancy Act again this morning to check to make sure that I am following the law. I see that the landlord has the right to deliver an eviction notice for unpaid rent right after the due date for the rent. As of today, I've given you a week to pay the rent and on June 5th I sent you the form for the Mutual Agreement to End a Tenancy along with the terms I was offering to you as inducement for a mutual agreement.

To summarize, my current offer for mutual agreement to end the lease is:

- 1) you pay no rent for June if you move out by June 30;
- 2) if you move out by June 23, you pay no rent for June AND I pay you \$200 to help with your moving costs;
- 3) your \$500 damage deposit is returned after inspection once you have moved out - subject to no damage having been done by you, your cat or your guests to my home or property. I will be testing for residual tobacco smoke in my studio, given my allergies.

As a courtesy, I am writing today to advise that this weekend, on my behalf [CH] will be delivering the Mutual Agreement form ready for your signature, as well as a 10 Day Notice of Eviction for Unpaid Rent. The rules allow the landlord to ask the tenant to move out almost immediately after full rent has not been paid. I could have asked [CH] to deliver an eviction notice in

January, February and March - all months when you did not pay the rent on time, but I did not do that and now, I must. However, to try to be considerate of your situation, I've asked [CH] to list the move out date as June 23rd.

On June 8, 2019, the tenant replied:

Firstly, I don't know why you and Cheryl keep saying that I was late for 3 month's rent when I wasn't and have my bank statements to prove that March was the ONLY month I have ever been late. Also, I have not smoked in this suite. And I can assure you that I nor my cat or guests have not caused any damage to either the suite or the property. We should of had a walk through pre move in inspection done but I have pictures and videos since first day. But I will expect a walk through move out and be present physically present for it. There are rules for the damage deposit return. *I will be vacating June 30th. I cannot leave any sooner than that.*

[emphasis added]

Later that evening, the landlord replied:

Thank you for your assurances about smoking and damage. I have no interest in keeping your damage deposit because if it is returned to you in full that means I can move back into my studio right away, and I assure you that I will certainly follow the procedures set out in the law.

In order for you to keep the \$900 owed for June, and for me not to proceed through the eviction process, the Mutual Agreement form with attached email from me dated June 5, 2019 has to be signed and dated by both you and [CH] (as my representative) on Sunday, June 9th.

If it should happen that you are able to move out on or before June 23, the Mutual Agreement still specifies that I'll pay you \$200 cash, which I will certainly do.

Less than an hour later, the tenant sent an email to the land with the subject line "rtb8.pdf – signed with DocuSign", the body of which read:

I took the liberty and signed this tonight. I will be having my sale tomorrow. If [CH] fills out the remainder I trust this to be satisfactory.

On June 13, 2019, the tenant sent an email to the landlord, which, in part, states:

Because the "mutal" [sic] document was not Signature signed and delivered in ink it is therefore null. I was harassed into this agreement and have copies of the emails to back up my statements and comments. Copies will not be allowed nor accepted.

Nevertheless I withdrawal the mutal [sic] agreement to vacate by June 30 2019. Because of the damage to my own personal belongings that have been kept and stored in the sun porch; an inner room of the rental unit and within the rental property to present date.

At the hearing, the tenant did not advance the argument that the Mutual Agreement was not valid because it was not signed "in ink" (as argued in her email of June 13, 2019). Rather, she testified that she understood that under the terms of the Mutual Agreement she was able to live in the rental unit rent-free for the month of June.

At the hearing, the landlord argued that the parties were bound by the Mutual Agreement, and that the Mutual Agreement required the tenant to have vacated the rental unit by June 30, 2019 in order to not to be required to pay June rent.

The landlord argued that, since the tenant remained in the rental unit until July 27, 2019, the tenant cannot benefit from the term in the Mutual Agreement grant free rent for June. As such, the landlord argues she is entitled to June rent in the amount of \$900.00.

The landlord stated that, despite the fact the tenant remained in the rental unit for the bulk of July 2019, she is only seeking payment of July rent for the first five days, as, on July 5, 2019, she was first made aware of the possibility that the rental unit might be in violation of local bylaws. The landlord calculated the value of these five days as \$150.00, based on a daily rental rate of \$30.00 (\$900 per month/ 30 days)

At the hearing, the tenant did not oppose paying \$150.00 rent for the first five days of July, 2019.

Analysis

Residential Tenancy Policy Guideline 30 states:

E. EARLY END TO A FIXED TERM TENANCY BY AGREEMENT

A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date. A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required.

Based on the testimony of the parties, and the documentary evidence provided, I find that the parties agreed, in writing, to end the tenancy before the expiry date of the tenancy agreement.

The tenant provided no basis in law to have the Mutual Agreement set aside because she did not sign it “in ink”. The tenant’s intentions are clear from the emails reproduced above. She intended to enter into an agreement to end the tenancy on the terms discussed in those email. She explicitly confirmed she would be vacating the rental unit on June 30, 2019. She signed and returned a copy of the Mutual Agreement to the landlord in response to the landlord’s request that she do so in order to gain the benefits of the terms the landlord was offering.

The terms by which the parties agreed to end the tenancy age contained in the emails chains between the parties. Based on the landlord’s email of June 5, 2019 and June 8, 2019, I find that the parties agree that if the tenant vacated the rental unit prior to the end of June, 2019, that she would not have to pay rent for that month. I find that the tenant demonstrated agreement to the terms proposed by the landlord by signing and returning the Mutual Agreement.

I find that the tenant remained in the rental unit until July 27, 2019.

I find that there is nothing in these emails which supports the tenant’s assertion that she was to receive free rent for the month of June, regardless of whether she vacated by the end of the month.

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant did not pay rent for the month of June, 2019, and that she had no right under the Act (or the Mutual Agreement) to withhold it.

As such, I order that the tenant is pay the landlord rent in the amount of \$900.00, representing unpaid rent for the month of June.

Section 57(3) of the Act states:

What happens if a tenant does not leave when tenancy ended

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I find that the tenancy ended on June 30, 2019, pursuant to the Mutual Agreement. I therefore find that the tenant was an overholding tenant (defined in section 57(1) as “a tenant who continues to occupy a rental unit after the tenant's tenancy is ended”) and that the landlord is entitled to compensation for the period of time that the tenant remained in the rental unit.

The landlord seeks compensation for five of the twenty-seven days the tenant remained in the rental unit after the tenancy ended. I order that, pursuant to section 57 of the Act, the tenant pay the landlord \$150.00 representing compensation for remaining in the rental unit after the tenancy had ended for five days.

The landlord currently holds the tenant’s \$500.00 security deposit in trust. I note that it is a breach of section 19 of the Act for a landlord to require or accept a security deposit greater than half the monthly rent. However, the Act does not contain a penalty clause should a landlord violate this section. Rather it is up to a tenant to demonstrate that the landlord’s violation of this section caused them some form of damage, and the tenant may receive compensation for that damage. The tenant made no such claim in the present case.

Pursuant to section 72(2), I order that the landlord may keep the security deposit of \$500.00 in partial satisfaction of the monetary orders I have made.

In summary, I order the tenant to pay the landlord \$550.00, as follows:

June Rent	\$900.00
July Overholding (5 days)	\$150.00
Security Deposit Credit	-\$500.00
Total	\$550.00

Conclusion

Pursuant to section 67 and 72 of the Act, I order that the tenant pay the landlord \$550.00.

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 30, 2019

Residential Tenancy Branch