



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the fixed term tenancy end in accordance with the Act?

Is the Landlord entitled to lost rental income to the end of the fixed term tenancy?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy originally started in 2012. At the outset of the tenancy the Landlord collected \$2,000.00 as a security deposit. On June 1, 2018 the Parties entered into a fixed term tenancy agreement with an end date of May 31, 2020. Rent of \$4,443.00 was payable on the first day of each month. On December 31, 2019 Tenant JC gave the Landlord in person a notice to end tenancy for January

31, 2019 (the "Notice"). Tenant JC provides a copy of that letter. Tenant BC moved out of the unit on April 31, 2019. The security deposit has been dealt with.

The Landlord states that the unit was advertised on January 10, 2019 for the same rental rate. The Landlord states that it hired a rental agent to assist the Landlord in obtaining new tenants. The Landlord states that despite several showings the unit did not rent until May 5, 2019 for a monthly rental amount of \$3,650.00. The Landlord states that this subsequent tenancy has a fixed term to end April 30, 2020. The Landlord claims \$10,309.00 as lost rental income basing this amount on a loss of \$739.00 for each month from May 2019 to May 30, 2020 inclusive for a total of 13 months. The Landlord states that it asked Tenant BC to move out of the unit however the Tenant told the Landlord that it could not leave and that the Tenant did not leave until April 31, 2019.

Tenant JC states that the Landlord was informed verbally and, in the letter, that the tenancy was ending due to an emergency situation involving domestic violence. The Tenant states that on December 31, 2018 the Tenant made several calls to the police requiring assistance in relation to the emergency. The Tenant provides a record of calls to the police on that date. The Tenant states that it was unknown that a confirmation statement was required until after the Notice was given to the Landlord. The Tenant states that confirmation of domestic violence was provided to the Landlord on May 5, 2019. Tenant JC provides a copy of an "Ending Fixed Term Tenancy Confirmation Statement" (the "Confirmation") dated May 5, 2019 and states that it is signed by a clinical counsellor registered with the BC Association of Clinical Counsellors. The Tenant provides documents of the registered status of the counsellor who signed the Statement. The Tenant states that this counsellor also signed another document for the Tenant to go on medical leave. The Tenant provides this document along with documents setting out the number of visits made to this counsellor with copies of receipts for payment to this counsellor.

Tenant BC, the husband of Tenant JC, states that he knew in early January 2019 that Tenant JC ended the tenancy and that he was required to move out of the unit as soon as was practical. Tenant BC states that he remained in the unit in order to leave it clean and undamaged. Legal Counsel for Tenant BC argues that Tenant BC left as soon as possible and that the Landlord accepted Tenant JC's ending of the tenancy as can be seen by the Landlord's act to immediately advertise the unit. Legal Counsel also argues that Tenant JC's letter of December 31, 2019 clearly sets out the circumstances leading to the end of the tenancy. Legal Counsel argues that the Landlord did not ask the Tenant for a confirmation of violence statement and is therefore stopped from claiming that the tenancy was not terminated. Legal Counsel argues that Tenant BC can only be seen in the circumstances as an overholding tenant within no obligation for rental payments after the overholding ends.

The Landlord argues that the Tenant did not provide the Confirmation until May 6, 2019 and that the Tenant's letter of December 31, 2018 is not a substitution for that Confirmation. The Landlord states that when the Landlord received the Notice the market was bad and that the Landlord knew that the unit needed to be advertised as soon as possible.

The Landlord claims \$1,825.00 for the costs of the rental agent. The Landlord confirms that nothing in the tenancy agreement provides that the Tenants will pay for re-rental costs.

Analysis

Section 45.1(2)(a) of the Act provides that a tenant is eligible to end a fixed term tenancy under this section if a statement is made that 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. Based on the undisputed evidence of the Confirmation, I find that the

Tenant became eligible to end the fixed term tenancy on May 5, 2019 when the certificate was issued.

Policy Guideline #30 provides that a tenant may give one month's notice to end a fixed-term tenancy early without financial penalty when fleeing family violence or when the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility. The notice must be accompanied by a confirmation statement that is completed by a person who is eligible to do so under the Residential Tenancy Regulation.

I note that nothing in the Act or Regulation sets out when any tenant is required to provide its notice and consider therefore that a tenant may give its notice to end a tenancy at any time, other than as set out in the above policy, as long as the date for the end of the tenancy complies with the Act. The policy requiring the provision of a confirmation statement at the same time as the notice to end the tenancy is given appears to be a policy that applies equally to persons fleeing family violence and persons moving into a care facility. This may be appropriate where a tenant fleeing violence has advance knowledge and is able to plan its departure like a tenant moving to a care facility. In this case, given the undisputed evidence of multiple calls to the police on the date that the Tenant gave its notice to end tenancy, I find on a balance of probabilities that the Tenant faced imminent danger at that time. There is no evidence of any advance knowledge on the part of the Tenant that imminent danger would occur on the date the Tenant gave its notice to end tenancy. For these reasons, I consider that that the Tenant could not reasonably provide both the notice to end tenancy and the Confirmation at the same time and that the policy requiring the confirmation certificate to be provided at the same time as the giving of the notice to end the tenancy cannot be applied in the circumstances.

Section 45.1(3) of the Act provides that 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.

Section 53(2) of the Act provides that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. As the Tenant became eligible to end the fixed term tenancy on May 5, 2019, I find that the Tenant could only end the fixed term tenancy for an end date of June 30, 2019 and that the notice to end tenancy for January 31, 2019 was not effective to end the fixed term tenancy for that date. While the Tenant did not provide any notice to end tenancy with the Confirmation I consider that the Tenant did provide a notice to end tenancy albeit too early to end the fixed term tenancy. As the Act allows for an effective date of notices to end a tenancy to be corrected I find that in the circumstances the Tenant's notice to end the fixed term tenancy for January 31, 2019 may be and is automatically corrected to June 30, 2019. As the Tenant was not eligible to end the fixed term tenancy until June 30, 2019, I find that the Landlord is entitled lost rental income of **\$739.00** for May 2019 and **\$739.00** for June 2019.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As nothing in the tenancy agreement provides that the Tenants will pay for re-rental costs and as there is no requirement under the Act for a tenant to pay for the Landlord's duties in re-renting a unit, I find that the Landlord has not substantiated that the Tenant did not comply with the Act or the tenancy agreement. I therefore dismiss the claims for re-rental costs.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,578.00**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,578.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 5, 2019

Residential Tenancy Branch