Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and evidence the Tenant submitted with the Application were personally served to someone currently living in the rental unit, although she cannot recall the date of that service. The Landlord stated that on September 02, 2019 she received the aforementioned documents from her current tenant. As the Landlord acknowledged receipt of these documents, I find that they were sufficiently served to her, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act).*

As the Landlord has been sufficiently served with the aforementioned documents, the evidence was accepted as evidence for these proceedings.

On November 11, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, however it was returned to her because the Tenant had moved. The Tenant agrees that she moved from the service address provided to the Landlord and that she did not provide the Landlord with an alternate service address.

The Landlord and the Tenant were advised that the hearing would proceed; that the Landlord could discuss the evidence she submitted during the hearing; and that if, at any point in the hearing the Landlord deemed it necessary for me to physically view any of her evidence, the hearing would be adjourned for the purposes of allowing her the opportunity to re-serve her evidence to the Tenant.

During the hearing the parties discussed a document that indicates the Tenant phoned the Landlord on three occasions on one day. The Tenant does not dispute this evidence and it was, therefore, not necessary for me to physically view this document.

During the hearing the parties discussed emails the Landlord submitted in evidence, some of which were also submitted in evidence by the Tenant. The Tenant does not dispute the content of any of these emails and it was, therefore, no necessary for me to view any of the emails submitted by the Landlord, unless those emails were submitted in evidence by the Tenant.

As the Tenant does not dispute any of the aforementioned evidence, and it was discussed at the hearing, the hearing was not adjourned for the purposes of re-serving this evidence.

The only document not accepted as evidence was the Landlord's written summary of events. The Landlord presented this evidence orally during the hearing. At the conclusion of the hearing the Landlord indicated that she did not wish an adjournment for the purposes of re-serving her evidence, given that the Tenant was not disputing the documents she submitted.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to compensation because they were not able to move into the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that they signed a written tenancy agreement, a copy of which was submitted in evidence by the Tenant.

This tenancy agreement is names three people as tenants, two of which are the Tenant's children. It is only signed by the Tenant and the Landlord. It was signed by the Landlord on August 03, 2019 and by the Tenant on July 31, 2019.

The tenancy agreement declares that the tenancy will begin on August 18, 2019 and that rent of $2,800.00 will be due by the first day of each month. The parties agreed that the Tenant would pay $700.00 in rent for August of 2019.

The Landlord and the Tenant agree that a security deposit of $1,400.00 and a pet damage deposit of $600.00 was paid for the rental unit, both of which were returned prior August 18, 2019.

The Tenant stated that:

- on August 14, 2019 she sent a text message to the Landlord asking if the tenancy could begin on September 01, 2019, rather than August 18, 2019;

- there was on-going communication on August 14, 2019 regarding this request, by text message and telephone;
- the Landlord would not agree to change the start date of the tenancy;
- she told the Landlord she would likely not move into the rental unit on August 18, 2019 but that she would pay the agreed upon rent for August;
- the Landlord agreed to meet her at the rental unit on August 14, 2019, but the Landlord did not attend that meeting;
- she never agreed to end the tenancy, by mutual consent;
- on August 15, 2019 the Landlord sent her a mutual agreement to end the tenancy, via email;
- the mutual agreement to end the tenancy was signed by the Landlord;
- she did not sign the mutual agreement to end the tenancy;
- on August 15, 2019 she informed the Landlord, in writing, that she intended to move into the rental unit; and
- she could not move into the rental unit because the Landlord refused to provide her with keys to the rental unit.

The Landlord stated that:

- before signing the tenancy agreement, the Tenant indicated she would like the tenancy to begin on August 15, 2019;
- the Tenant changed her mind and indicated she would like the tenancy to begin on September 01, 2019;
- they agreed the tenancy would begin on August 18, 2019;
- on August 07, 2019 the Tenant sent her a text message, in which she indicated she thought the tenancy was to begin on September 01, 2019;
- on August 14, 2019 she received a text message from the Tenant asking if the tenancy could begin on September 01, 2019, rather than August 18, 2019;
- there was on-going communication on August 14, 2019 regarding this request, by text message and telephone;
- she did not agree to change the start date of the tenancy;
- during a telephone conversation on August 14, 2019 the Tenant stated that she would like to end the tenancy, by mutual agreement;
- the Tenant told the Landlord she would send her a mutual agreement to end the tenancy;
- shortly after discussing the mutual agreement to end the tenancy the Tenant contacted her and asked her not to return the security/pet damage deposit;
- the Tenant did not provide the Landlord with a mutual agreement to end the tenancy, so she sent one to the Tenant, via email, on August 15, 2019;
- she signed the mutual agreement to end the tenancy;
- the Tenant did not sign the mutual agreement to end the tenancy;

- she did not want the tenancy to proceed because the Tenant had changed her mind about the move-in date on many occasions; and
- she did not provide the Tenant with keys to the rental unit.

The Tenant is seeking compensation for $8,400.00 because she was unable to move into the rental unit. In support of this claim the Tenant stated that:

- prior to signing this tenancy agreement, she had given notice to end her previous tenancy;
- because she had ended her previous tenancy and the Landlord was not proceeding with this tenancy, she had to find alternate accommodations;
- she had limited time to find accommodations for September 01, 2019;
- she had limited choices of accommodations, as she wanted a place within her children's school district and she needed a place that accepted pets;
- she was able to find new accommodations on August 21, 2019, for September 01, 2019;
- she looked at approximately 15 possible rental units;
- she is paying $2,750.00 in rent for her current accommodations;
- her current home has two bedrooms, while this rental unit had three bedrooms;
- she is sharing her bedroom with one of her daughters;
- she had to give away some furniture because she was moving into a smaller unit;
- the need to find alternate accommodations in such a short time was very stressful for her; and
- she missed two days of work in order to find alternate accommodations.

The Landlord does not think the Tenant is entitled to any compensation, as she contends the tenancy ended by mutual consent.

Analysis:

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a written tenancy agreement, which was to begin on August 18, 2019.

On the basis of the undisputed evidence, I find that only the Applicant who attended the hearing signed the aforementioned tenancy agreement. As the other two parties named as tenants on the agreement, who are children, did not sign the agreement, I cannot conclude that they had a tenancy agreement with the Landlord. I find that although the children had the right to occupy the unit, they were not tenants and they do not, therefore, have the right to compensation from the Landlord. I therefore dismiss the application for a monetary Order naming either of the two children.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* There is no evidence that either party gave written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this tenancy ended on the basis of the fixed term tenancy date, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. On the basis of the undisputed evidence that both of the parties signed a mutual agreement to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

In determining that the tenancy did not end by mutual agreement I have considered all of the electronic communications submitted in evidence by the parties. There is nothing in these communications that convinces me the Tenant mutually agreed to end the tenancy, in writing.

In adjudicating this matter, I have placed no weight on the Landlord's testimony that the Tenant verbally agreed to end the tenancy by mutual consent. Even if this were true, that verbal agreement does not meet the legislative requirements of section 44(1)(c) of the *Act*, which requires the agreement to be in writing.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. As the Tenant was never provided with keys to the rental unit, I cannot conclude that the Tenant vacated or abandoned the rental unit. I therefore find that this tenancy did not end pursuant to section 44(1)(d) of the *Act.*

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. I find that this tenancy ended, pursuant to section 44(1)(f) of the *Act.* I find that the tenancy ended because the Landlord did not provide the Tenant with the opportunity to move into the rental unit.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:
- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord breached the Tenant's right to quiet enjoyment when the Landlord prevented her from moving into the rental unit.

Residential Tenancy Branch Policy Guideline #6 reads, in part:

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Section 67 of the *Act* authorizes me to determine that amount of compensation a landlord must pay to a tenant if the landlord breaches the tenant's right to quiet enjoyment.

I find that the Landlord's failure to honor the terms of the tenancy agreement, which gave the Tenant the right to exclusive possession of the rental unit on August 18, 2019, was a very serious breach of her right to quiet enjoyment which had very serious consequences on the Tenant.

In determining that the breach had very serious consequences for the Tenant I was influenced by the Tenant's undisputed testimony that:

- because she had ended her previous tenancy and the Landlord was not proceeding with this tenancy, she had to find alternate accommodations;
- she had limited time to find accommodations for September 01, 2019;
- she had limited choices of accommodations, as she wanted a place within her children's school district and she needed a place that accepted pets;
- her current home has one less bedroom than the rental unit, so she is sharing a bedroom with one of her daughters;
- she is paying almost the same amount in rent for smaller accommodations;
- she had to give away some furniture because she was moving into a smaller unit;
- the need to find alternate accommodations in such a short time was very stressful for her; and
- she missed two days of work in order to find alternate accommodations.

In compensation for this breach I award the Tenant $5,600.00, which is the equivalent of two month's rent. Given the significant impact the breach had on the Tenant, I find that this amount to be fair and reasonable.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $5,700.00, which includes $5,600.00 in compensation for a breach of the Tenant's quiet enjoyment of the rental unit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with

this Order, it may be filed with the Province of British Columbia 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 *Residential Tenancy Act*.

Dated: December 18, 2019

Residential Tenancy Branch