



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S
FFT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application, filed on November 9, 2019, the Landlord sought monetary compensation from the Tenant, authority to retain their security deposit and recovery of the filing fee. In the Tenant's Application filed on November 20, 2019, the Tenant sought return of their security deposit and recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference at 1:30 p.m. on March 31, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The Landlord testified as follows. She stated that that this month to month tenancy began January 5, 2019. Monthly rent was payable in the amount of \$2,295.00, payable on the 5th of the month. A copy of the residential tenancy agreement was also provided in evidence and which confirmed this testimony.

The Landlord testified that the tenancy ended on November 4, 2019.

The Landlord testified that on October 16, 2019 the Tenant informed her that she would be moving out by November 16, 2019. The Tenant asked to use her deposit to pay half the months' rent. The Landlord refused this request.

The Landlord sought unpaid rent for the time period November 5, 2019 to December 4, 2019 on the basis of the timing of the Tenant's notice to end her tenancy.

In response to the Landlord's claim, and in support of her claim for return of her security deposit, the Tenant testified as follows.

The Tenant confirmed that she gave her notice to end tenancy on October 16, 2019, first by text and then by email. A copy of the Tenant's text message was provided in evidence and read as follows:

"okay, i am sorry if I called [G.] and been stressing all of you. I am giving my 30 day notice now [N.] starting today. Do you want me to write it in the email too?

[reproduced as written]

The Landlord asked for notice by email, following which the Tenant sent the following:

"Hi [N.]

I am writing this letter to notify you of us moving out out from unit [rental unit address]. I would want to vacate the property on the 17th of November this year. I would also want to use the half month deposit of 1150CAD for that period of November 5-16, 2019. Thank you.

[Tenant's name]"

[reproduced as written]

The Tenant testified that she moved out by November 4, 2019 as that was the date the Landlord asked her to move from the rental unit.

Analysis

The Landlord seeks monetary compensation for unpaid rent for the time period November 5, 2019 to December 4, 2019.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic 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.
- (2) A tenant 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

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

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the Tenant gave notice to end her tenancy on October 16, 2019. As her rent was due on the 5th of the month, the effective date of her notice, pursuant to the above, is December 4, 2019.

Despite this, the text communication between the parties indicates the Landlord asked the Tenant to move out by November 4th; for clarity I reproduce those text messages as follows:

[Landlord]: If ur not paying rent nov u should leave before.

[Tenant]: okay i will find as fast as i could so we can move out before or on nov. 5

[Landlord]: Ok so u should be moved by nov 4th at 1pm according to the tenancy act...and damage deposit will only be damage deposit then. [thumbs up emoji]

[Landlord]: I will text u with 24 hr notice when I have showings to possible tenants.

[reproduced as written]

The parties confirmed the Tenant vacated the rental unit on November 4, 2019.

I find, based on the communication between the parties, that the parties agreed the tenancy would end on November 4, 2019. Although the Tenant could have remained in the unit until December 4, 2019 pursuant to section 45, she consented to the Landlord's request and moved out as of November 4, 2019.

I find, that by telling the Tenant to vacate by November 4, 2019, the Landlord is estopped from claiming rent for the November 5 to December 4 rental period.

The legal principle of estoppel has been explained in a recent decision of the B.C. Supreme Court, *Guevara v. Louie*, 2020 BCSC 380, which dealt with a decision of the Residential Tenancy Branch. The presiding Judge, the Honourable Mr. Justice Sewell, wrote as follows:

[63] While the legal test of waiver requires a “clear intention” to “forgo” the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right “represents that those rights will be compromised or varied.” *Tymchuk v. D.L.B. Properties*, [2000 SKQB 155](#) at paras. [11-17](#). Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather “whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it.” *Bowen v. O’Brien Financial Corp.*, [1991 CanLII 826 \(BC CA\)](#), [1991] B.C.J. No. 3690 (C.A.)...

[65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore*, [2005 SCC 38](#) at para. [51](#):

...When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[66] The concept of estoppel was also described by the British Columbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* [1988 CanLII 174 \(BC CA\)](#), [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith*, [2010 BCCA 394](#):

...it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ...” [emphasis added]. That statement was affirmed by the English Court of Appeal in *Habib Bank* and, as we read the decision, accepted by that Court in *Peyman v. Lanjani*, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

...that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.

[68] Estoppel has been a fundamental principle of the law for a long time: see *Hughes v. Metropolitan Railway Co.* (1877), 2 App. Cas. 439. However, the Arbitrator failed to address this fundamental principle in his reasons. By so doing he deprived Ms. Guevara of the right to show that in the circumstances of the application before him it would have been unjust to permit Ms. Louie to terminate the tenancy agreement given the long course of conduct in which she acquiesced.

Applying the above to the case before me, I find that the Landlord represented that she would not expect payment of rent from November 5, 2019 to December 4, 2019 in the event the Tenant vacated the rental unit by November 4, 2019. In this manner, she represented to the Tenant that she would not be relying on the strict interpretation of section 45 of the *Act*.

The evidence confirms that the Tenant moved from the rental unit on November 4, 2019 as requested by the Landlord. I find that it would be unjust to permit the Landlord to recover rent for the November 5, 2019 to December 4, 2019 rental period given that she directed the Tenant to move from the premises as of November 4, 2019.

I therefore dismiss the Landlord's claim for unpaid rent for the November 5, 2019 to December 4, 2019 rental period.

I accept the Landlord's evidence that she incurred costs to advertise the rental unit. However, this was a month to month tenancy such that such costs are inevitable. I therefore dismiss her claim for recovery of her advertising costs.

The evidence confirms the Landlord applied for Dispute Resolution within 15 days of receipt of the Tenant's forwarding address. As such, the doubling provisions of section 38(6) are not applicable.

The Tenant is entitled to return of her security deposit in the amount of \$1,150.00.

As the Tenant has been substantially successful, she is also entitled to recover the \$100.00 filing fee for a total award of **\$1,250.00**.

Conclusion

The Landlord's claim for unpaid rent, advertising costs and recovery of the filing fee is dismissed.

The Tenant is entitled to return of her security deposit and recovery of the filing fee for a total award of **\$1,250.00**. In furtherance of this the Tenant is granted a Monetary Order in the amount of **\$1,250.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial 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: April 1, 2020

Residential Tenancy Branch