



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 09, 2019 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on December 06, 2019 were sent to each Tenant, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 09, 2020 the Landlord submitted additional evidence and an Amendment to an Application for Dispute Resolution, in which he increased the amount of his monetary claim, to the Residential Tenancy Branch. The Landlord stated that these documents were served to the Tenants, via registered mail, on April 16, 2020. The Tenants acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On March 29, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, on April 24, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

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.

All of the evidence submitted by the parties has been reviewed but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for lost revenue and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on July 01, 2018;
- at the start of the tenancy the parties signed a tenancy agreement;
- the tenancy agreement was for a fixed term, the fixed term of which required the Tenants to vacate the rental unit by June 30, 2019;
- the tenancy agreement did not declare why the rental unit needed to be vacated by June 30, 2019;
- on July 06, 2019, the parties signed a second tenancy agreement;
- the second tenancy agreement was for a fixed term, the fixed term of which required the Tenants to vacate the rental unit by June 30, 2020;
- the second tenancy agreement did not declare why the rental unit needed to be vacated by June 30, 2020;
- the terms of both tenancy agreements were the same, except for the dates of the fixed terms and the amount of rent due;
- the first tenancy agreement declared that rent \$2,600.00 was due by the first day of each month;
- the second tenancy agreement declared that rent was \$2,652.00 per month;
- the Tenants paid a security deposit of \$1,300.00;
- on September 25, 2019 the Tenants gave the Landlord notice of their desire to end the tenancy on December 01, 2019;
- on October 05, 2019 the Tenants sent the Landlord a letter confirming their intent to move out of the unit prior to the end of the fixed term of the second tenancy agreement and asking permission to advertise the unit on behalf of the owner;
- the keys to the rental unit were returned on December 01, 2019; and
- the Tenants provided a forwarding address, via email, on December 02, 2019.

The Landlord stated that:

- he is not certain when the rental unit was vacated;
- he did not plan to move into the rental unit after the end of the fixed term of either tenancy agreement;
- he stated that he was not aware he could not include a “move out clause” as a term of this fixed term tenancy unless the unit was a sublet or he planned to move into the rental unit;
- he is semi-retired and travels frequently and, as such, he wanted to rent the unit on a yearly, rather than a monthly basis,
- term 17 of both tenancy agreements declares, in part, that if the Tenant remains in “possession after the expiry of the Term with the permission of the Landlord but without signing a new lease, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year”;
- he is not familiar with technology, so he was unable to advertise the rental unit on popular websites;
- he accepted the Tenants’ offer to advertise the rental unit on his behalf;
- he made no attempts to advertise for a new tenant;
- he was unable to find a new renter for the unit until February 22, 2020; and the
- new renter was located as a result of advertisements placed by the Tenants.

The male Tenant stated that:

- the Tenants believed they had to move out of the rental unit on June 30, 2019 unless they signed a new fixed term tenancy agreement;
- he stated he believed they had to move out on June 30, 2019 because term 6 of the first tenancy agreement declared that they must vacate the unit;
- they would have preferred to enter into a month-to-month tenancy agreement, but they did not believe that option was available to them;
- the Landlord clearly indicated they could remain only if they agreed to enter into another fixed term tenancy agreement of one year;
- they signed the fixed term tenancy agreement because they had a very young child and they did not want to vacate the unit on June 30, 2019;
- when he signed either tenancy agreement, he did not read term 17 carefully and he does not fully understand what it means;
- they fully moved out of the rental unit on November 27, 2019;
- he began advertising the rental unit, on behalf of the Landlord, on several popular websites sometime in the middle of October;
- the rental unit was initially advertised at monthly rent of \$2,700.00, at the direction of the Landlord; and

- rent was reduced to \$2,600.00 on December 13, 2019, at the direction of the Landlord.

The Landlord is seeking compensation, in the amount of \$7,358.00, for the period between December 01, 2019 and February 21, 2020.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a fixed term tenancy agreement, the fixed term of which ended on June 30, 2019. I find that this tenancy agreement declared that the Tenants must vacate the rental unit at the end of this fixed term.

As of December 11, 2017, landlords were prohibited from including a clause in a tenancy agreement that required a tenant to move out at the end of a fixed term unless the tenancy was a sublease or in circumstances prescribed in section 13(2) of the *Residential Tenancy Regulation*, which reads:

For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

As there is no evidence this tenancy was a sublease or that the Landlord planned to move back into the rental unit at the end of the fixed term, I find that the Landlord did not have the right to require the Tenants to vacate at the end of the fixed term of the first tenancy agreement.

Section 12(3) of the Residential Tenancy Regulation Schedule stipulates that if a fixed term tenancy agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

As the Landlord did not have the right to require the Tenants to vacate at the end of the fixed term on June 30, 2019, I find that this tenancy reverted to a monthly (periodic) tenancy on July 01, 2019, pursuant to section 12(3) of the Residential Tenancy Regulation Schedule.

In adjudicating this matter, I have placed little weight on the part of term 17 of both tenancy agreements that refers to the Tenants remaining in “possession after the expiry of the Term with the permission of the Landlord but without signing a new lease, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year”. Section 6(3)(c) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that part of term 17 of the tenancy agreement does not clearly reflect the Tenants’ legal right to continue the tenancy on a month to month basis even if the Tenants did not have the “permission of the Landlord”. As such, I find that this part of term 17 is unenforceable.

On the basis of the undisputed evidence, I find that on July 06, 2019 the parties entered into a second fixed term tenancy agreement, the fixed term of which ended on June 30, 2020. I find that this tenancy agreement also declared that the Tenants must vacate the rental unit at the end of this fixed term.

On the basis of the testimony of both parties, I find that when the fixed term of the first tenancy agreement ended on June 30, 2019, the Landlord clearly indicated that he would not agree to continue the tenancy on a monthly basis and that the Tenants would have to sign a new fixed term tenancy agreement if they wished to remain in the rental unit.

On the basis of the undisputed testimony of the male Tenant, I find that the Tenants did not wish to vacate the rental unit on June 30, 2019, as they had a young child, and that they signed the new fixed term tenancy agreement only because they believed it was the only way they could continue living in the rental unit.

A tenancy agreement must be entered into freely, with both parties understanding the terms of the agreement, and signing it because it is what they want to do. This is referred to as signing by “mutual assent”. Duress and undue influence are things that may affect mutual assent if one of the parties has been pressured or coerced into signing the agreement. Where it is established that tenant was induced to enter into a tenancy agreement by the undue influence of the landlord, the agreement may be set aside.

Undue influence has been defined as the unconscionable use by one person of power possessed by her/him over another in order to induce the other to enter a contract. Undue influence has also been said to occur when there is an improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective. To

put it more simply, in the context of a tenancy agreement, it is the act of a landlord which removes, restricts, or constrains a tenant's ability to exercise their free will in regard to signing a tenancy agreement and therefore causes them to sign something they would not have signed if that pressure was non-existent.

I find that the Tenants signed the second fixed term tenancy agreement as a result of undue influence exerted by the Landlord. I find that the Landlord exerted undue influence over the Tenants when he indicated that the Tenants could not remain in the rental unit on the basis of a monthly tenancy after June 30, 2019, even though they clearly had the legal right to do so. I find that the Landlord exerted undue influence over the Tenants when he included a clause in the first tenancy agreement that declared the Tenants must vacate the rental unit at the end of the fixed term of the tenancy, even though he did not have the legal right to require them to vacate.

In adjudicating this matter, I find that there was a significant power imbalance between the two parties, as both parties believed the Landlord had the power to require the Tenants to vacate the rental unit.

As I have concluded that the Tenants signed the second fixed term tenancy agreement as a result of undue influence exerted by the Landlord, I find that the second fixed term tenancy agreement is of no force or effect. I therefore find that the parties were not bound by any of the terms of the second tenancy agreement and that this tenancy continued, on a monthly basis after June 30, 2019.

Section 45(1)(a) of the *Act* allows tenant to end a periodic (monthly) tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. I find that on September 25, 2019 the Tenants provided the Landlord with written notice to end their tenancy on December 01, 2019, which complies with section 45(1)(a) of the *Act*.

Section 45(1)(b) of the *Act* allows tenant to end a periodic (monthly) tenancy by giving the landlord notice to end the tenancy effective on a date that 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. As rent for this tenancy was due by the first day of each month, I find that section 45(1)(b) of the *Act* required that the Tenants' notice to end this tenancy needed to be effective on the last day of any given month.

I find that the notice to end the tenancy the Tenants gave on September 25, 2019 could have declared that the tenancy was ending on October 31, 2019 or November 30, 2019.

The Tenants did not have the right to serve the Landlord with notice to end the tenancy on December 01, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. As the Tenants did not have the right to end the tenancy on December 01, 2019, I find that the effective date of their written notice to end the tenancy was December 31, 2019, pursuant to section 53 of the *Act*.

As the Tenants did not serve the Landlord with written notice that ended the tenancy prior to December 31, 2019, I find that they remained obligated to pay rent for December of 2019. As rent was not paid for that month, I find that the Landlord is entitled to rent for December of 2019.

Section 43(1) of the *Act* authorizes a landlord to impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing.

Section 42 of the *Act* requires landlords to give tenants a notice of a rent increase at least 3 months before the effective date of the increase, in the approved form. The approved form for serving a notice of rent increase is a Notice of Rent Increase for Residential Units, Residential Tenancy Branch Form #RTB-7.

On the basis of the undisputed evidence, I find that the rent for this unit was increased from \$2,600.00 to \$2,652.00, effective July 01, 2019. Even if the Landlord had the right to increase the rent to \$2,652.00, pursuant to section 43(1) of the *Act*, I find that the Landlord did not have the right to collect that rent increase, as there is no evidence that the Landlord served the Tenants with Residential Tenancy Branch Form #RTB-7.

As there is insufficient evidence that the Landlord had the right to collect the rent increase of \$52.00, I find that the rent remained at \$2,600.00. I therefore find that the Landlord is entitled to unpaid rent/lost revenue for December of 2019, in the amount of \$2,600.00.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. I find that the Landlord collected a rent increase of \$52.00 for 5 months in 2019 which he was not entitled to collect, as the Tenants were not served with

Residential Tenancy Branch Form #RTB-7. I therefore find that the Tenants are entitled to recover this rent overpayment, in the amount of \$260.00, pursuant to section 43(5) of the *Act*.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,700.00, which includes \$2,600.00 in lost revenue/unpaid rent from December of 2019 and \$100.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenants' security deposit of \$1,300.00, in partial satisfaction of the monetary claim, leaving the amount of the claim at \$1,400.00.

After deducting the rent overpayment of \$260.00, the amount due to the Landlord is \$1,140.00. Based on these determinations I grant the Landlord a monetary Order for \$1,140.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants, 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: May 08, 2020

Residential Tenancy Branch