Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dutton's Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

In this dispute, the tenant seeks compensation under section 67 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on June 3, 2020 and an arbitration hearing was held on June 29, 2020. The tenant and the landlord's agent attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to compensation as claimed, in the amount of $742.50?

2. Is the tenant entitled to recovery of the filing fee in the amount of $100.00?

Background and Evidence

The tenancy began on December 1, 2017 and ended on August 14, 2019. Monthly rent was originally $1,435.00, later increasing to $1,485.00, and which was due on the first day of the month. The tenant paid a security deposit of $715.00. A copy of the Residential Tenancy Agreement was submitted into evidence.

On July 24, 2019, the tenant emailed the landlord with a written notice that he wanted to end the tenancy effective September 1, 2019. A copy of the handwritten notice was submitted into evidence, and which read as follows:

> To Whom It May Concern,
> This is my notice to
> vacate [address of rental unit]
> for September 1, 2019.
>
> [Name of Tenant]
> [signature]
>
> 07/19/2019

The landlord's agent (F.W.) responded by email, saying "This looks good. I am forwarding this on to [J.C.]. You will be required to vacate August 31st."

On July 29, the tenant emailed the landlord and said, "I'm not sure if this is works for you guys at all, but I could potentially be ready to vacate by August 14 and be prorated for a half months rent." A couple of days later, on July 31, the landlord's agent (E.O.) responds to the tenant and says, "Certainly! We'll begin marketing this property for August 15th availability and if it rents for that date we will reimburse you for the other half of the month."

A few days, possibly more (the tenant could not recall the exact date), the landlord's agent (either E.O. or another person who took care of showings) phoned the tenant and advised him that the landlord had found a new tenant. The final move-out inspection was scheduled, which then took place on August 14, 2019. The tenant and the landlord's agent (J.C.) were present at that inspection. The tenant handed over the keys to the landlord's agent at that time.

Two days later, on August 16, the landlord emailed the tenant to say the following:

> I'm just emailing to let you know that our plans to rent to a new tenant for #3 have fallen through at the last minute. So, unfortunately, at the moment we do not have someone to take over the property yet. We are working with some applicants from previous showings that remain interested in the property – I'll let you know how it goes from here, hopefully they will take it.

In rebuttal, the tenant testified that he asked the landlord, sometime around the 29th of August, if he could get his keys back. However, he received no response from the landlord. In response, the landlord's agent testified that "I didn't think he really wanted the keys back." Finally, the landlord's agent submitted that the landlord was clear with the tenant regarding how they would proceed, in relation to finding a new tenant and prorating the rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the landlord agreed to the tenant's offer that if the landlord found a new tenant for August 15 that they, the landlord, would prorate and refund the remaining rent. A few days before August 14, the landlord advised the tenant that they had secured a new tenant. The tenant attended to the rental unit and completed a final inspection and handed over the keys, on August 14, 2019. Given these facts, I find that the tenancy ended on August 14, 2019.

Section 44(1) of the Act lists fifteen ways that a tenancy may end. Section 44(1)(a)(i) is where a tenant gives notice, as is the case here. Equally important is section 44(1)(d), however, which states that:

> A tenancy ends only if one or more of the following applies: [. . .] the tenant vacates or abandons the rental unit;

Section 37(2)(b) of the Act states that, "When a tenant vacates a rental unit, the tenant must [. . .] give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property."

Finally, section 35 of the Act states that the tenant and landlord must complete an inspection of the rental unit at the end of the tenancy, before a new tenant begins to occupy the rental unit.

Given that the landlord advised the tenant that they had found a new tenant, the tenant acted accordingly and in good faith on that information. The tenant acted on the word of the landlord and did what was necessary when a tenancy comes to an end, namely,

conducting a final inspection and handing over the keys. Likewise, the landlord conducted its final inspection and took the keys from the tenant, effectively ending the tenancy on August 14, 2019. In other words, the tenant vacated the rental unit within the meaning of section 44(1)(d) of the Act. Thus, after that, the tenant was no longer liable for the remaining portion of the month's rent, and the landlord was bound by the agreement to prorate the rent. Indeed, that the landlord ignored the tenant's request for the keys (even if there were just a few days left) underscores the fact that the tenancy ended on August 14 and that the tenant did vacate the rental unit on that date.

Finally, while it was no doubt an unfortunate occurrence that the deal with the new tenant fell through, that is a matter between the landlord and the new tenant. The tenant ought not bear the cost of a collapsed deal between the landlord and a third party.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for compensation against the landlord in the amount of $742.50. Thus, pursuant to section 67 of the Act, I award this amount.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful, I grant his claim for reimbursement of the $100.00 filing fee.

Conclusion

I hereby grant the tenant a monetary order in the amount of $842.50, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file, and enforce, the order in the Provincial Court of British Columbia.

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: June 29, 2020

Residential Tenancy Branch