



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

The landlord seeks compensation for loss of, and unpaid rent pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). They also seek recovery of the filing fee under section 72(1) of the Act.

The landlord filed an application for dispute resolution on June 15, 2020 and a hearing was first held on October 6, 2020 before a different arbitrator; the landlord and an agent for the tenant attended that hearing. That hearing was adjourned to today's date of December 15, 2020 and was held before me.

The landlord attended this hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the tenant did not attend the hearing. The landlord confirmed that she served her evidence on the tenant shortly after she filed her application for dispute resolution. The correct legal name of the corporate tenant was amended on the application, and this is reflected in the style of cause on the cover page of this decision.

It should also be noted that the previous arbitrator's Interim Decision, along with a new Notice of Dispute Resolution Proceeding, was emailed by the Residential Tenancy Branch to both parties.

Based on this information I find that the tenant was served in accordance with the Act and the *Rules of Procedure* and was therefore given notice of the hearing in accordance with the rules of procedural fairness.

Issues

1. Is the landlord entitled to any or all of the compensation claimed?
2. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on July 1, 2018. A copy of the written Residential Tenancy Agreement, which the parties both referred to as the “lease,” was submitted into evidence. The tenancy was a one-year fixed-term tenancy that automatically renewed every year on the first of July. Monthly rent in 2020 was \$2,405.00, and the tenant paid a security deposit of \$1,175.00.

The landlord gave evidence that the tenant owes \$2,810.00 in rent arrears for April and May 2020, owes \$1,230.00 in rent arrears for June 2020 (the tenant consented to the landlord retaining the security deposit as payment toward partial payment of rent), and owes \$2,405.00 in arrears for July 2020. The total rent arrears claimed are therefore in the amount of \$6,445.00.

On or about May 27, 2020, the tenant (or a representative of the tenant) contacted the landlord by email and reiterated their position (communicated sometime between May 9 and May 27, 2020) that they no longer wanted the rental unit after May 31, 2020. Essentially, the tenant gave notice to end the fixed term tenancy before it expired on July 1, 2020.

In addition to the above-noted amount being claimed, the landlord had amended her application to include a \$500.00 claim for a parking stall rental. A copy of the parking stall agreement was submitted into evidence and it was signed by both parties on June 1, 2020, for commencement on June 1, 2020 and with an expiry date of May 31, 2021.

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.

Claim for Unpaid, and Loss of Rent

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

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.

In this case, the tenant gave notice sometime in May 2020 that they wished to end the fixed term tenancy on May 31, 2020. Such notice is in breach of the Act and had the tenant provided proper notice and fulfilled their legal obligations under the tenancy agreement then the landlord would have continued to receive rent until the end of June 2020. As such, I find that the landlord is entitled to compensation for the loss of rent for April and May 2020 (for which the tenant owes \$2,810.00) and is entitled to compensation for the loss of rent for June 2020 (minus the security deposit which the landlord has retained) in the amount of \$1,230.00.

However, that the tenant ended the fixed-term tenancy on May 31, it follows that the tenancy could not have continued past June 30, 2020. As such, the tenant is not legally obligated to pay rent after a tenancy has ended. It is worth pointing out that, despite the parties' agreement (which is annotated on the tenancy agreement) that the tenant was to give the landlord two month's notice before ending the fixed term tenancy, this is in contradiction of section 45(2) of the Act. A tenant may only give notice to end a fixed term tenancy if it is done in compliance with section 45(2) of the Act.

In this case, the tenancy improperly ended on May 31, 2020, and the tenant is responsible for the rent that was to be paid for June 2020. But, they are not responsible for a loss of rent after June 30, 2020, as it is was made clear by the tenant that they did not wish to continue to rent the rental unit (after May 31, 2020).

For these reasons, and 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 landlord has met the onus of proving her claim for at least some of the rent arrears and loss of rent in the amount of \$4,040.00.

Claim for Loss of Revenue from Parking Stall

I find that, as the tenancy ended on May 31, 2020, and the contract between the parties for the leasing of a parking stall did not go into effect until June 1, 2020, that this contract is entirely outside of the tenancy agreement. Thus, it falls outside the jurisdiction of the Act, and consequently I have no jurisdiction to consider this particular claim. This claim is thus dismissed without leave to reapply. Any losses suffered by the landlord in relation to this specific contract would need to be pursued through the Civil Resolution Tribunal.

Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was mostly successful, I grant her claim for reimbursement of the \$100.00 filing fee.

Conclusion

I hereby grant the landlord a monetary order in the amount of \$4,140.00, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed within 15 days of receiving the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 15, 2020

Residential Tenancy Branch