



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 9, 2020, wherein the Tenant sought monetary compensation from the Landlord, including return of the rent paid as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on January 29, 2021. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:57 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on October 17, 2020 by registered mail. A copy of the registered mail package was provided in evidence before me; a copy of the tracking number is provided on the unpublished cover page of this my Decision. The Tenant testified that pursuant to the tracking information provided by Canada Post, the Landlord signed for the hearing package on October 22, 2020. I accept the Tenant's testimony in this regard and I find the Landlord was duly served as of October 22, 2020. I note this is also consistent with the deeming provisions of section 90 of the Act which provides that documents served by registered mail are deemed served five days later.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of the rent paid for July 2020?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the rental unit is located in a popular recreational area. She stated that the Landlord lives on one side of the rental home in a separate unit. The Landlord rents out beds and rooms on the adjoining side. The Tenant stated that she is aware that the Landlord has rented out as many as 10 beds to separate individuals under separate tenancy agreements.

The Tenant moved to British Columbia from another province. She entered into a residential tenancy agreement with the Landlord whereby she was to pay \$650.00 per month in rent. The Tenant confirmed these details over telephone calls and electronic communication and in support she provided copies of text communication with the Landlord which confirmed this agreement. The Tenant moved into the rental unit on June 1, 2020 and paid two months rent in the amount of \$1,300.00. A copy of the electronic transfer to the Landlord was also provided in evidence before me.

The Tenant stated that the Landlord also offered her a job at a pizzeria. The Tenant was pleased to have both accommodation and employment. Unfortunately, the Landlord expected her to work seven days a week, which was not possible as the Tenant was also a student. When the Tenant informed the Landlord she could not work as many hours, the Landlord fired her from her job and kicked her out of the rental unit. The Tenant stated that the Landlord would not even give her a few days to find alternate accommodation and as a result the Tenant lived in her car for a period of time. Copies of text communication filed in evidence confirm the Landlord did not give the Tenant proper notice to end her tenancy.

The Tenant testified that the Landlord kept her rent for July 2020, even though she kicked the Tenant out on July 3, 2020. The Tenant also testified that the Landlord failed to pay her wages such that she brought another application before the Employment Standards Branch.

In the claim before me the Tenant sought return of the rent paid for July 2020 as well as recovery of the filing fee.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the Tenant's undisputed testimony and evidence I find as follows.

I find the parties entered into a periodic fixed term tenancy commencing June 1, 2020. Pursuant to the agreement the Tenant rented a room in a large home which was shared with other tenants. Monthly rent was \$650.00. The Landlord resided in a separate unit on the other side of the subject rental and the parties did not share a kitchen and bathroom.

The Landlord accepted the Tenant's June and July 2020 rent payment totalling \$1,300.00.

I accept the Tenant's evidence that on July 3, 2020 the Landlord ended the tenancy without any prior notice and the Tenant vacated the rental unit immediately.

A tenancy may only be ended in accordance with the *Act*. Section 44 provides as follows:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [*tenant's notice*];

(i.1)section 45.1 [*tenant's notice: family violence or long-term care*];

(ii)section 46 [*landlord's notice: non-payment of rent*];

(iii)section 47 [*landlord's notice: cause*];

(iv)section 48 [*landlord's notice: end of employment*];

(v)section 49 [*landlord's notice: landlord's use of property*];

(vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find the Landlord ended this tenancy without notice, without cause and in contravention of the Act. In doing so, the Landlord denied the Tenant any benefit of the tenancy for July 2020.

I find the Tenant is entitled to return of the rent paid for July 2020 and I award her \$650.00. As she has been successful in her Application, she is also entitled to recover the \$100.00 filing fee for a total award of **\$750.00**.

Conclusion

The Tenant's Application for monetary compensation in the amount of \$750.00 is granted. In furtherance of this the Tenant is granted a Monetary Order in the amount of **\$750.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: January 29, 2021

Residential Tenancy Branch