



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUGH & MCKINNON REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL-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 unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 20, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was, therefore, accepted as evidence for these proceedings.

On January 12, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally delivered to the Landlord's business address on January 13, 2021. The Agent for 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 participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and to keep all or part of the security deposit?

Preliminary Matter

The Tenant stated that she filed an Application for Dispute Resolution in which she applied for the return of her security deposit. The Tenant stated that a hearing has been scheduled for May 25, 2021 to consider the merits of her Application for Dispute Resolution.

Residential Tenancy Branch records show that the Tenant did not file her Application for Dispute Resolution until January 12, 2021 and, as such, the Tenant's Application for Dispute Resolution was not joined with this Application for Dispute Resolution.

As the parties were advised at this hearing, it is highly likely that my decision in this matter will also resolve the main issue in dispute in the Tenant's Application for Dispute Resolution, as I will either be ordering the Landlord to return the security deposit to the Tenant or I will be granting the Landlord authority to retain the security deposit.

In the event the Tenant concludes that the hearing scheduled for May 25, 2021 is unnecessary, she is asked to contact the Residential Tenancy Branch to cancel that hearing and withdraw her Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 14, 2017;
- the parties signed a second tenancy agreement for a fixed term, the fixed term of which began on September 01, 2018 and ended on September 30, 2019;
- the parties did not sign another tenancy agreement after the fixed term ended on September 30, 2019;
- the parties did not sign another fixed term tenancy agreement because the Agent for the Landlord told the Tenant the owner was planning on moving back into the rental unit in 2020;
- the tenancy continued on a month-to-month basis after September 30, 2019;
- the monthly rent was \$1,750.00 at the end of the tenancy;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$875.00;
- the Tenant did not give the Landlord written authority to retain any portion of the security deposit;
- the security deposit has not been returned to the Tenant;
- on August 15, 2020 the Tenant sent the Landlord an email, in which the Tenant informed the Landlord she would be ending the tenancy, effective September 30, 2020;

- the rental unit was vacated on September 28, 2020;
- a forwarding address for the Tenant was written on the condition inspection report on September 28, 2020.;
- rent was paid for September of 2020; and
- the Agent for the Landlord returned the September rent payment to the Tenant.

The Tenant stated that:

- in July of 2019 the Agent for the Landlord told her the owners were planning to move back into the rental unit in July of 2020;
- she understood she would have to vacate the unit prior to July of 2020 to accommodate the owners;
- in May of 2020 she contacted the Agent for the Landlord to determine when the owners were moving back into the rental unit;
- in May of 2020 she was informed that the owners would be moving back into the unit in mid-August of 2020;
- in anticipation of having to move to accommodate the owners, she found alternate accommodations;
- she was never served with a Two Month Notice to End Tenancy for Landlord's Use;
- the Agent for the Landlord told her rent for September was being refunded because she was entitled to one month's free rent due to the owner moving back into the unit; and
- if the Agent for the Landlord erred in returning September rent to the Tenant, the management company should be required to pay the returned rent to the owner.

The Agent for the Landlord stated that:

- the Tenant was told that the owner intended to move back into the rental unit;
- the date the owner wanted to move back into the unit changed several times;
- due to the COVID-19 pandemic, the owner has still not moved back into the rental unit;
- she authorized the return of September's rent to the Tenant;
- she authorized the return of September's rent due to "human error"; and
- she authorized the return of September's rent because at that time she believed the Tenant was entitled to one month's free rent due to the owner moving back into the unit.

The Landlord submitted an email, dated May 19, 2020, in which the Agent for the Landlord informed the Tenant that the owner would returning in mid-August of 2020.

The Landlord submitted an email, dated May 20, 2020, in which the Tenant informed the Agent for the Landlord that she was planning to vacate by August 10, 2020.

The Tenant submitted an email, dated July 02, 2020, in which the Agent for the Landlord informed the Tenant that the owner would not be returning until December 01, 2020 and that the Tenant could stay in the unit until November 30, 2020.

The Tenant submitted an email, dated August 19, 2020, in which the Agent for the Landlord informed the Tenant that the Tenant could stay in the unit until November 30, 2020 and that “under these circumstances” she is not entitled to “a month’s rent”.

Analysis

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

On the basis of the undisputed evidence, I find that on August 15, 2020 the Tenant gave the Landlord notice to end the tenancy, via email, effective September 30, 2020. I therefore find that the tenancy ended on September 30, 2020, pursuant to section 44(1)(a) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant and the Agent for the Landlord had on-going conversations regarding the owner’s plans to move back into the unit. Specifically, I find that:

- in July of 2019 the Tenant was informed that the owner would be moving back into the rental unit in July of 2020;
- on May 19, 2020 the Agent for the Landlord informed the Tenant that the owner would be returning in mid-August of 2020.
- on July 02, 2020 the Agent for the Landlord informed the Tenant that the owner would not be returning until December 01, 2020 and that the Tenant could stay in the unit until November 30, 2020.
- on August 19, 2020 the Agent for the Landlord again informed the Tenant that she could stay in the unit until November 30, 2020.

I find that none of the conversations the Agent for the Landlord had with the Tenant regarding when the owner was moving back into the rental unit served as formal notice to end the tenancy. Rather, I find that the information was provided to the Tenant for

the purpose of informing her that, at some point in the future, the owner would be ending the tenancy for the purposes of moving back into the unit. As none of these conversations served as formal notice to end the tenancy, the Tenant was not obligated to vacate the unit on the basis of any of these conversations.

Section 49(3) of the *Act* permits a landlord to end a periodic tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Until the Tenant was served with formal notice to end the tenancy, pursuant to section 49(3) of the *Act*, the Tenant was not obligated to vacate the rental unit.

On the basis of the undisputed evidence, I find that the Tenant was not served with a Two Month Notice to End Tenancy for Landlord's Use, which is the form used to end the tenancy pursuant to section 49(3) of the *Act*. As such, the Tenant was under no obligation to vacate the rental unit by the time she vacated it on September 28, 2020.

While I accept it was reasonable for the Tenant to find alternate accommodations because she knew the Landlord was intending to move back into the unit at some point in the near future, the timing of her move was for her own convenience and was not the choice of the owner.

Section 51 of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant did not receive a notice to end a tenancy pursuant to section 49 of the *Act*, I cannot conclude that she is entitled to receive one month's free rent.

On the basis of the undisputed evidence, I find that the Tenant paid the rent that was due on September 01, 2020 and that the payment was returned to the Tenant because the Agent for the Landlord mistakenly believed the Tenant was entitled to compensation pursuant to section 51 of the *Act*.

As the Tenant was not entitled to one month's free rent pursuant to section 51 of the *Act*, I find that she remains obligated to pay the rent that was due on September 01, 2020. I find that she is obligated to pay this rent even if it was mistakenly returned to her. As the September rent remains unpaid, I find that the Tenant owes the Landlord \$1,750.00 in unpaid rent from September of 2020.

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 \$1,850.00, which includes \$1,750.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$875.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$975.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: February 02, 2021

Residential Tenancy Branch