



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT (Tenant's Application)
OPR-DR, OPRM-DR, OPC, MNSDL, FFL

Introduction

This hearing convened as a result of Cross Applications. In the Tenant's Application filed on September 17, 2020, she sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 15, 2020, (the "10 Day Notice"), an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement and recovery of the filing fee. In the Landlord's Application filed on September 22, 2020, the Landlord sought an Order of Possession and monetary compensation based on the 10 Day Notice, an Order of Possession based on a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), and recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference at 11:00 a.m. on November 10, 2020. Both parties called into the hearing, as did legal counsel for the Tenant, H.K. (Although this tenancy was a sub-tenancy, and as such the Landlord is properly described as a sub-Landlord and the Tenant as a sub-Tenant, I refer to them simply as Landlord and Tenant in this Decision.)

Preliminary Matter—Matters in Dispute

At the outset of the hearing counsel for the Tenant advised that she had vacated the rental unit as of September 30, 2020. Accordingly, the Tenant's request for an Order canceling the 10 Day Notice, as well as her request that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement were not longer applicable. Similarly, the Landlord's request for an Order of Possession based on the 10 day Notice and the 1 Month Notice

were no longer required as the Tenant had given up vacant possession of the rental unit.

During the original hearing date on November 10, 2020, the Landlord stated that she had amended her Application on October 15, 2020 to include a claim for retention of the Tenant's security and pet damage deposit. The Tenant conceded that she received some documents from the Landlord but stated that she did not receive a formal Amendment. At the time of the November 10, 2020 hearing, the Landlord's amendment was not available to me.

By Interim Decision I amended the Landlord's Application to include a claim that she be permitted to retain the Tenant's security and pet damage deposit. I informed the parties that the Landlord was at liberty to assert that she had amended her Application prior to my Interim Decision.

Prior to the reconvened hearing on February 1, 2021, the Landlord provided electronic communication with the Residential Tenancy Branch which confirmed she had filed a formal amendment on October 15, 2021. Branch records further confirm the Landlord's Amendment was filed on that date.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. What should happen with the Tenant's security and pet damage deposit?
3. Should either party recover the filing fee?

Background and Evidence

This tenancy was created as a subtenancy. A copy of the "Residential Sublease Agreement" was provided in evidence before me (the "Sublease Agreement"). The Sublease Agreement references the "Master Lease" which was apparently signed by the Landlord September 1, 2017. A copy of the Master Lease was not provided in evidence.

The Sublease Agreement provided that the term of the tenancy was from 12:00 noon on July 15, 2020 to 12:00 noon on September 30, 2020 with option to extend.

The Sublease Agreement further provided that monthly rent was \$4,000.00 USD per month. As well, it indicated the Tenant paid a \$500.00 USD security deposit and a \$500.00 USD pet damage deposit.

The Tenant provided evidence of all payments made to the Landlord.

The Tenant testified that, due to the condition of the rental unit, on July 31, 2020 the Landlord agreed to reduce the rent to \$3,500.00 USD as of August 15, 2020. This was confirmed in an email of the same date.

In the hearing before me, the Landlord stated the rent was \$4,000.00 USD, or \$5,318.00 CDN. When asked to comment on the August 15, 2020 email, she then confirmed that she reduced rent to \$3,500.00 USD but claimed she only did so for one month.

The Landlord issued the 10 Day Notice on September 15, 2020 alleging the sum of \$4,000.00 USD was outstanding for rent. The Tenant testified that she paid \$3,500.00 USD to the Landlord for the August 15, 2020 to September 15, 2020 time period as was the agreed upon sum. She also paid \$1,750.00 USD or the balance of September 2020 as her tenancy ended on September 30, 2020. These payments were confirmed in documentary evidence provided by the Tenant.

The Tenant confirmed her move out date of September 30, 2020 by letter dated August 27, 2020. A copy of this letter was provided in evidence before me.

The Tenant confirmed she sought return of double her security and pet damage deposit claiming the Landlord failed to return her deposit, or apply for Dispute Resolution, within 15 days of the end of her tenancy as required by the *Act*.

The Tenant stated that when she received the 10 Day Notice, she provided the Landlord with her forwarding address. She also testified that on September 30, 2020 when the tenancy ended, and they attended to participate in the move out inspection, she provided her forwarding address to the Landlord.

When the hearing continued the Tenant's friend, P.R. testified on her behalf. P.R. stated that the tenancy term was from July 15, 2020 to September 30, 2020 as per the written tenancy agreement. He stated that he has considerable experience managing properties and as such when the Tenant was given a 10 day Notice she contacted him

as she was confused why should would receive such a notice when her tenancy was coming to an end on September 30, 2020. P.R. reached out to the Landlord to ask what she was expecting to happen in terms of the end of the tenancy. He then sent the Landlord an email about the requirements regarding the end of the tenancy, orders of possession and the security deposit.

P.R. stated that on September 30, 2020 there was a normal end of tenancy with a walk through. P.R. signed off on the move out inspection. P.R. handed the Landlord the Tenant's forwarding address on a written document. A copy of that document was provided in evidence before me.

In response to the Tenant's claim, and in support of her claim, the Landlord also testified. The Landlord asserted that the tenancy did not end on September 30, 2020, as the term of the tenancy specifically provided for an "option to extend" such that it automatically reverted to a month to month tenancy on September 30, 2020.

The Landlord also stated that the monthly rent was \$4,000.00 USD as per the written agreement. She testified that she reduced the rent to \$3,500.00 USD for August only. She further testified that they did not sign a new lease agreement and the discount was not to continue. She stated that she gave her a reduction out of good faith and because she wanted the Tenant to have a great experience. The Landlord stated that she felt like there was nothing she could do but go back to the original agreement regarding the \$4,000.00 payment. This was set out in an email to the Tenant on August 25, 2020.

The Landlord also confirmed that the rental unit was left clean and undamaged such that her request to retain the Tenant's security and pet damage deposit related only to unpaid rent. In her Amended Application she indicated she intended to retain the full \$1,000.00 USD deposits towards the unpaid rent.

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.

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. In this case the Landlord seeks monetary compensation from the Tenant for unpaid rent. The Landlord alleges the Tenant failed to pay the agreed upon rent and failed to end her tenancy in accordance with the *Act* such that the Landlord suffered a loss of rent.

This tenancy was a subtenancy whereby the Landlord rented out her rental unit to the Tenant pursuant to the Sublease Agreement. The Sublease Agreement provided that the tenancy was to end September 30, 2020 with an option to renew. The evidence indicates the Tenant sent communication to the Landlord on August 27, 2020 confirming she would not be renewing the lease and would be vacating on September 30, 2020.

The Landlord relied on section 45 of the *Act* which reads as follows:

45 (1) A tenant may end a periodic 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, and

(b) 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.

(2) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added in bold italics]

In this case, the “other period upon which the tenancy was based” is the fixed term from July 15, 2020 to September 30, 2020. The parties agreed the tenancy would end on September 30, 2020 unless they exercised the option to renew. The decision to extend the tenancy would need to be mutual as this was a subtenancy.

During the hearing before me, the Landlord claimed she was informed by the Residential Tenancy Branch that the Tenant could not end the tenancy at the end of September as rent was due on the 15th of the month. I find it likely the Landlord failed to inform the Branch that the tenancy was a sub-tenancy, that the parties had specifically agreed to an end date of September 30, 2020, and that the Tenant had exercised her option of not renewing the tenancy by ending it on the date provided in the tenancy agreement.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 19--Assignment and Sublet* which provides in part as follows:

C. SUBLETTING

Sublets as contemplated by the Residential Tenancy Act

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

As noted above, the term of a sublease agreement *must* be for a period shorter than the term of the original tenancy and the subtenant *must* agree to vacate the rental unit on a specific date. As this is a subtenancy, the sub Landlord cannot lease the rental unit out for longer than the term of her original tenancy. As noted, I was not provided with a copy of the Main Lease, such that I am not able to determine whether the Landlord had permission to enter into subtenancies, nor am I able to determine the term of the original tenancy. If the Main Lease was on a month to month basis, this Landlord was not permitted to enter into a fixed term for any sublease over 30 days as she cannot promise a rental term longer than that which she is entitled.

In any event, I find the Tenant exercised her option to end the tenancy at the end of the fixed term. The Landlord is therefore not entitled to rent beyond September 30, 2020. Her claim for rent for the October 1-15, 2020 period is dismissed without leave to reapply.

The parties also disagreed as to the amount of rent payable. The tenancy agreement clearly states rent was payable in the monthly amount of \$4,000.000 USD, however the evidence confirms the parties agreed to a lower amount, namely \$3,500.00 USD. The Tenant says this amount was payable for the balance of the tenancy. The Landlord argues it was only for the month of August.

Copies of email communication were provided in evidence before me, which included an email from the Landlord to the Tenant on August 17, 2020 wherein she wrote as follows:

"We agreed to \$4130 per month until I negotiated it lower **moving forward**. I was clear on that in my emails if you check back. The rent is not \$3000/month, it is \$3500/month. Please transfer the remaining \$500 before EOD."

The Landlord then emailed the Tenant on August 25, 2020 wherein she wrote as follows:

It's a shame that you acted as you did and refused entry to pest control yesterday. We have video footage of you receiving your eviction notice (prior to you throwing it in my face) so it is known that you have been served on that day, August 24th, 2020. Because of this, you have given me no choice but to revert back to our original legal agreement.

I'll remind you that I had **no legal obligation** to lower your rent or last month. In fact, the woman who I spoke with at the RTB was shocked that I did so as it's "unprecedented" according to her..."

[bold emphasis in original]

Although the Tenant was born in Canada, I am advised she has lived in the United States for a number of years. I find the above communication from the Landlord to be false and misleading and an attempt by the Landlord to bully the Tenant into paying a higher rent. Rent reductions are not “unprecedented”, but rather are regularly agreed to by landlords and tenants when negotiating tenancies.

The evidence is clear the parties agreed to a rent reduction. The Landlord confirmed her agreement in the August 17, 2020 email and further confirmed this amount was “going forward”. The evidence is also clear the Tenant paid rent pursuant to this agreement. The Landlord’s email of August 25, 2020 is merely an attempt to resile from that agreement and she is simply not at liberty to unilaterally change the agreement. I therefore find the rent was \$3,500.00 USD per month as of August 15, 2020.

The evidence confirms the Tenant paid the following to the Landlord:

Date	purpose	USD
July 12	payment for security and pet damage deposit	\$1,000.00
July 16	payment for July 15 to August 14 rent and cleaning	\$4,160.00
August 17	payment for August 15 to September 14 rent	\$3,500.00
September 14	payment for September 15-30	\$1,750.00

I find the above payments full satisfy the Tenant’s financial obligations pursuant to the Sublease Agreement as well as the agreement respecting the reduced rent. I therefore find the Landlord is not entitled to monetary compensation for unpaid rent. As the Landlord is not entitled to monetary compensation from the Tenant, her request to retain the Tenant’s security deposit and pet damage deposit is dismissed without leave to reapply.

As the Landlord has been unsuccessful in her Application, I also dismiss her request for recovery of the filing fee.

As previously noted, I find the Landlord amended her Application to include a request to retain the Tenant’s security and pet damage deposit on October 15, 2020. As this was within 15 days of the end of the tenancy, I find the Landlord complied with section 38 of the *Act* with respect to the security deposit.

I therefore find the Tenant is entitled to return of her security and pet damage deposit in the amount of \$1,000.00 USD, or \$1,260.00 CDN. As the Tenant has been successful, I award her recovery of the \$100.00 filing fee for a total award of \$1,360.00. In

furtherance of this I grant the Tenant a Monetary Order in the amount of **\$1,360.00**. This Order must be served on the Landlord and may be filed in the B.C. Provincial Court (Small Claims Division).

Conclusion

The tenancy ended on September 30, 2020 such that the parties' claims relating to the 10 Day Notice and the 1 Month Notice are dismissed without leave to reapply. Similarly, the Tenant's request for an Order that the Landlord comply with the *Act* the *Regulations* or the tenancy agreement is dismissed without leave to reapply.

The Landlord's claims for monetary compensation from the Tenant for unpaid rent, authority to retain her security and pet damage deposit, and recovery of the filing fee are dismissed without leave to reapply.

The Tenant is entitled to return of her security and pet damage deposit as well as recovery of the filing fee. She is entitled to a Monetary Order in the amount of **\$1,360.00**.

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: February 25, 2021

Residential Tenancy Branch