



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This Application for Dispute Resolution was the subject of a dispute resolution proceeding on November 30, 2020, which resulted in the Landlords being granted a monetary Order in the amount of \$7,371.91, dated December 14, 2020.

The Tenants applied for a review of the December 14, 2020 decision and Order, and on January 11, 2021 a different Residential Tenancy Branch Arbitrator ordered that a new hearing of the original application take place. On January 11, 2021 that Arbitrator suspended the decision and order issued on December 14, 2020, until the new hearing is completed.

This review hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials "CH", hereinafter referred to as the Tenant, stated that notice of this review hearing was served to each Landlord, via email, on January 15, 2021. The Landlord stated that both Landlords received those hearing documents and that he is representing the female Landlord at this review hearing.

At the review hearing the Tenants acknowledged being served with the Landlord's Application for Dispute Resolution and the evidence the Landlords submitted to the Residential Tenancy Branch in August of 2020. As the Tenants acknowledged service of those documents, the Landlords' evidence was accepted as evidence for these proceedings.

The Tenants submitted evidence to the Residential Tenancy Branch in support of the Application for Review Consideration. The Tenant stated that this evidence was not served to the Landlords as evidence for these proceedings. As the evidence was not served to the Landlords, I am unable to consider that evidence at these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for expenses related to how this tenancy ended?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on November 08, 2018;
- the Tenants agreed to pay monthly rent of \$2,950.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,475.00;
- after the tenancy ended the Tenants provided a forwarding address to the Landlord, in writing, although neither party recalls the date the address was served to the Landlord;
- the Tenants did not give the Landlord written permission to retain any portion of the security deposit;
- the Landlords have not repaid any portion of the security deposit;
- on March 28, 2020 the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the Tenants must vacate the rental unit by May 31, 2020;
- the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants on March 28, 2020 was not signed by the Landlords;

- the Tenants filed an Application for Dispute Resolution to dispute the Two Month Notice to End Tenancy for Landlord's Use, because the Notice that had been served to them was not signed by the Landlords;
- sometime after the Tenants served their Application for Dispute Resolution to the Landlords, the Landlords served the Tenants with a signed copy of the Two Month Notice to End Tenancy for Landlord's Use;
- neither party recalls when the signed copy of the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants, although they both agree it was sometime in mid-April of 2020;
- the second Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants was identical to the first Two Month Notice to End Tenancy for Landlord's Use, except the second copy was signed by the Landlord;
- a hearing was convened on May 29, 2020 to consider the Tenants' application to cancel the unsigned Two Month Notice to End Tenancy for Landlord's Use;
- at the hearing on May 29, 2020 the parties mutually agreed to settle the issues in dispute in the Tenants' Application for Dispute Resolution;
- one of the terms of the settlement agreement reached on May 29, 2020 was that the parties mutually agreed to extend the effective date of the unsigned Two Month Notice to End Tenancy for Landlord's Use to July 31, 2020;
- on the basis of the aforementioned term of the settlement agreement, the Landlord was granted an Order of Possession that required the Tenant to vacate the rental unit on July 31, 2020;
- the Order of Possession was served to the Tenants, via email, on June 05, 2020;
- another term of the settlement agreement reached on May 29, 2020 was that "In extending the vacancy date to July 31, 2020 the tenants undertake to do their best to find alternative housing by July 1, 2020 but if such is not secured the tenants may occupy the rental up until July 31, 2020 at which point the tenants must return vacant possession of the rental unit to the landlords in any circumstance";
- another term of the settlement agreement reached on May 29, 2020 was that "The landlords may request and the tenants shall provide, via email, weekly updates as to the tenant's success, or efforts, in trying to secure alternative accommodation";
- on June 05, 2020 the Landlords sent the Tenant an email, in which the Landlords asked the Tenants for an update on their efforts to find alternate accommodation;
- on June 11, 2020 the Landlords sent the Tenant a second email, in which the Landlords asked the Tenants for an update on their efforts to find alternate accommodation;
- the Tenant did not respond to the emails sent on June 05, 2020 and June 11, 2020 until June 11, 2020,

- on June 11, 2020 the Tenant informed the Landlords that he is in the process of purchasing a new home;
- in the email of June 11, 2020, the Tenant informed the Landlord that he will take possession of his new home on September 01, 2020, although the sale of the home is still subject to some conditions;
- in the email of June 11, 2020, the Tenant informed the Landlord that he will vacate the rental unit on July 31, 2020;
- on June 12, 2020 the Landlord sent the Tenant an email in which he asked the Tenant to confirm that he would not be vacating the unit until July 31, 2020;
- on June 13, 2020 the Tenant confirmed that he would not be vacating the unit until July 31, 2020;
- in May of 2020 the Tenant #2 informed the Landlords, via text message, that he will be vacating the rental unit by June 01, 2020; and
- the rental unit was fully vacated on July 31, 2020.

The Tenant stated that:

- he searched many popular websites and went to many viewings in an attempt to either find another rental home or to purchase a home;
- sometime in June of 2020, he entered into an agreement to purchase a home;
- he took possession of the home he purchased on September 01, 2020; and
- he stayed with a neighbor for the month of August of 2020.

The Tenant #2 stated that:

- he found alternate accommodations prior to June 01, 2020; and
- he vacated the rental unit in late May of 2020.

The Landlords are seeking compensation for the cost of renting alternate accommodations, in the amount of \$5,337.02, and for moving costs, in the amount of \$1,934.89.

In support of the monetary claims the Landlord stated that:

- they sold the home they were living in prior to May 31, 2020;
- because the home was sold, they had to vacate that home by May 31, 2020;
- because the Tenants did not vacate the rental unit after being served with the Two Month Notice to End Tenancy for Landlord's Use, the Landlords had to rent temporary accommodations;
- that the Landlords rented temporary accommodation for the period between May 31, 2020 and July 14, 2020, for which they paid \$5,337.02;
- they were able to stay with friends for the period between July 14, 2020 and July 31, 2020, so no costs were incurred for that period;
- in February of 2020 the Landlords told the Tenants they would be selling the rental unit and that they wished to move into the rental unit on June 01, 2020;
- when the Tenants were served with the Two Month Notice to End Tenancy for Landlord's Use on March 28, 2020 the Landlords fully expected that the Tenants

would vacate the rental unit by the declared effective date of that notice, which was May 31, 2020;

- on, or about, April 07, 2020 they listed their home for sale;
- the home they were living in at the time sold on April 11, 2020, with a completion date of June 01, 2020;
- they were not aware that the Tenants were disputing the Two Month Notice to End Tenancy for Landlord's Use until April 13, 2020, at which time it was too late to change the completion date for the sale of their home;
- he believes the Tenant had no intention of finding alternate accommodation prior to July 31, 2020;
- on May 31, 2020 they had to move their belongings into storage, because the rental unit had not been vacated;
- they paid \$1,934.89 to move their belongings from storage to the rental unit; and
- they would not have incurred the cost of alternate accommodations or additional moving costs if the Tenants had vacated the rental unit on May 31, 2020.

In response to the monetary claims the Tenant stated that:

- the Tenants complied with the terms of the settlement agreement;
- the rental unit was fully vacated on July 31, 2020, as required by the settlement agreement; and
- there was nothing in the settlement agreement that required the Tenants to pay the Landlord's moving costs or costs of alternate accommodation.

Analysis

On the basis of the undisputed evidence, I find that this periodic tenancy began on November 08, 2018 and that rent was due by the first day of each month.

On the basis of the undisputed evidence, I find that on March 28, 2020 the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use. The Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending pursuant to section 49(3) of the *Residential Tenancy Act (Act)*. The Two Month Notice to End Tenancy for Landlord's Use further declared that the Tenants must vacate the rental unit by May 31, 2020.

Section 49(7) of the *Act* stipulates that a notice given pursuant to section 49 of the *Act* must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective the notice to end tenancy be signed and dated by the party giving the notice.

On the basis of the undisputed evidence, I find that the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants on March 28, 2020 did not comply with sections 49(7) or 52(a) of the *Act*, as it was not signed by the Landlords.

Had the parties not reached a settlement agreement regarding this Two Month Notice to End Tenancy for Landlord's Use, I find it highly likely that the Notice would have been set aside, as it did not comply with those sections.

Section 49(8)(a) of the *Act* stipulates that a tenant may dispute a notice served pursuant to section 49(3) of the *Act*, by filing an Application for Dispute Resolution within 15 days of receiving the notice to end tenancy. I find it was reasonable for the Tenants to file an Application for Dispute Resolution to dispute the Two Month Notice to End Tenancy for Landlord's Use, given that the notice they were served did not comply with sections 49(7) or 52(a) of the *Act*.

On the basis of the undisputed evidence, I find that sometime in April of 2020 the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, which was the same of the notice that was served to them on March 28, 2020, except this notice was signed by the Landlords. I note that the Tenants did not dispute this second Two Month Notice to End Tenancy for Landlord's Use and the Landlords did not apply for an Order of Possession on the basis of either Two Month Notice to End Tenancy for Landlord's Use.

Section 49(2)(a) of the *Act* stipulates that when a landlord serves notice to end a tenancy pursuant to section 49(3) of the *Act*, the notice must end a periodic tenancy on a date that must be not earlier than 2 months after the date the tenant receives the notice and 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.

I find that the Two Month Notice to End Tenancy for Landlord's Use that was served in April of 2020 does not comply with section 49(2)(a) of the *Act*, as the declared effective date of May 31, 2020 is not two full months after the notice was served in April of 2020.

Section 53(3) of the *Act* stipulates that in the case of a notice to end a tenancy, other than a notice under sections 45 (3), 46 or 50, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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 that complies with the required notice period, or if the landlord gives a longer notice period, that complies with that longer notice period.

As the second Two Month Notice to End Tenancy for Landlord's Use was not served to the Tenants until sometime in April of 2020 and rent is due by the first day of each month, the earliest effective date of this notice to end tenancy was June 30, 2020. I therefore find that if the Landlords has applied for an Order of Possession on the basis of the second Two Month Notice to End Tenancy for Landlord's Use, they would not have obtained an Order of Possession for a date prior to June 30, 2020.

On the basis of the undisputed evidence, I find that on May 29, 2020 the Landlords and the Tenants mutually agreed to amend the effective date of the Two Month Notice to End Tenancy for Landlord's Use that was served on March 28, 2020 to July 31, 2020. On the basis of this mutual agreement, I find that the Tenants were obligated to vacate the rental unit not later than July 31, 2020 and that the unit was vacated by July 31, 2020.

On the basis of the undisputed evidence, I find that on May 29, 2020 the Landlords and the Tenants entered into a settlement agreement and that one of the terms of that settlement agreement was that the Tenants would "undertake to do their best to find alternative housing by July 1, 2020 but if such is not secured the tenants may occupy the rental up until July 31, 2020 at which point the tenants must return vacant possession of the rental unit to the landlords in any circumstance".

On the basis of the undisputed evidence, I find that Tenant #2 vacated the rental unit prior to June 01, 2020. I therefore find that Tenant #2 clearly complied with the term of the settlement agreement that required him to do his best to find alternate housing by July 01, 2020.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant also attempted to find alternate accommodations and that sometime in June of 2020 he entered into an agreement to purchase a home, with a sales completion date of September 01, 2020. I specifically note that the term of the settlement agreement did not require the Tenant to find alternate rental accommodation. In these circumstances the Tenant opted to purchase alternate accommodations, which typically takes longer than renting alternate accommodations.

In the absence of evidence to show that the sale of the Tenant purposely delayed the completion date of the sale of his new home, I am satisfied that he complied with the term that required him to do his "best to find alternate housing". In adjudicating this matter, I find it unreasonable to conclude that this term of the settlement agreement

required the Tenant to find rental housing for the period between July 01, 2020 and July 31, 2020.

Another term of the settlement agreement reached on May 29, 2020 was that “The landlords may request and the tenants shall provide, via email, weekly updates as to the tenant’s success, or efforts, in trying to secure alternative accommodation”. (Emphasis added)

On the basis of the undisputed evidence, I find that in May of 2020 Tenant #2 informed the Landlords, via text message, that he will be vacating the rental unit by June 01, 2020. As the Landlords did not ask Tenant #2 for a further update regarding his plans to vacate, I find that Tenant #2 complied with the term of the settlement agreement that required him to provide the Landlords with an information about his efforts to seek alternate accommodation, when requested.

On the basis of the undisputed evidence, I find that on June 05, 2020 and June 11, 2020 the Landlords sent the Tenant an email, in which the Landlords asked the Tenant for an update on his efforts to find alternate accommodation, and that the Tenant provided that information, via email, on June 11, 2020. As the Tenant responded to those requests within 7 days of receiving them, I find that the Tenant complied with the term of the settlement agreement that required him to provide the Landlords with an information about his efforts to seek alternate accommodation, within one week of receiving a request for that information.

On the basis of the undisputed evidence, I find that on June 12, 2020 the Landlords sent the Tenant an email in which the Landlord asked the Tenant to confirm that he would not be vacating the unit until July 31, 2020 and that on June 13, 2020 the Tenant confirmed that he would not be vacating the unit until July 31, 2020. As the Tenant responded to that email the next day, I find that the Tenant complied with the term of the settlement agreement that required him to provide the Landlords with an information about his efforts to seek alternate accommodation, within one week of receiving a request for that information.

As no evidence was presented that establishes either Tenant failed to reply to an email requesting an update on their efforts to find alternate accommodations within one week of receiving such a request, I cannot conclude that the Tenants did not comply with the term of the settlement agreement that required him to provide the Landlords with an information about their efforts to seek alternate accommodation, within one week of receiving a request for that information.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances, the Landlords bear the burden of proving they are entitled to compensation for the losses claimed.

On the basis of the undisputed testimony of the Landlord, I find that the Landlords sold the home they were living in during May of 2020 and that they had to vacate that home by May 31, 2020, because that home had been sold.

On the basis of the undisputed evidence, I find that because the Landlords were unable to move into the rental unit on June 01, 2020, they incurred the costs of moving their property into storage and they then incurred additional costs of moving their property to the rental unit once it had been vacated.

As the Two Month Notice to End Tenancy for Landlord's Use on March 28, 2020 was not signed and would likely have been unenforceable if the parties had not mutually agreed to extend the effective date of the Notice, I find that the Tenants were not obligated to vacate the rental unit by May 31, 2020 on the basis of that Notice.

As previously stated, the earliest effective date of the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants in April of 2020 was June 30, 2020. I therefore find that the Tenants were not obligated to vacate the rental unit by May 31, 2020 on the basis of that Notice.

As the Tenants were not obligated to vacate the rental unit by May 31, 2020 on the basis of either Two Month Notice to End Tenancy for Landlord's Use that were served to the Tenants and there is nothing in the settlement agreement reached on May 29, 2020 that required them to vacate the unit by May 31, 2020, I find that the Tenants were not legally obligated to vacate the unit by May 31, 2020.

As the Tenants were not, under any circumstances, legally required to vacate the rental unit by May 31, 2020, I find that the Landlords would have incurred the costs of moving their property into storage for a period of time and then incurred additional costs of moving their property from storage into the rental unit. As the Landlords did not incur

these costs because the Tenants breached a legal obligation, I find the Landlords are not entitled to compensation for moving costs. The claim for moving costs is dismissed.

As the settlement agreement reached on May 29, 2020 permitted the Tenants to remain in the rental unit, under any circumstances, until July 01, 2020, I find that the Tenants had the right to occupy the rental unit until at least that date. As the Tenants were not legally obligated to vacate the rental unit prior to July 01, 2020, I find that the costs the Landlords incurred for accommodation for June of 2020 were not incurred as a result of the Tenants breaching a legal obligation. I therefore find that the Landlords are not entitled to compensation for accommodation costs for June of 2020, and that claim is dismissed.

As previously stated, I find that both Tenants complied with the term of the settlement agreement that required them to “do their best to find alternative housing by July 1, 2020 but if such is not secured the tenants may occupy the rental up until July 31, 2020 at which point the tenants must return vacant possession of the rental unit to the landlords in any circumstance”. As the Tenants complied with this term and the Tenant was unable to find alternate housing prior to July 31, 2020, I find that the Tenant had the right to remain in the rental unit until July 31, 2020.

As the Tenant was not legally obligated to vacate the rental unit prior to July 31, 2020, I find that the costs the Landlords incurred for accommodation for any portion of July of 2020 were not incurred as a result of the Tenant breaching a legal obligation. I therefore find that the Landlords are not entitled to compensation for accommodation costs for any portion of July of 2020, and that claim is dismissed.

I note that none of the losses being made by the Landlord were incurred as a result of the Tenants failing to comply with the term in the settlement agreement that required them provide weekly updates on their efforts to secure alternate accommodations, upon the request of the Landlords. Regardless, I have previously determined that there is insufficient evidence to establish that the Tenants failed to comply with this term of the settlement agreement.

In adjudicating this matter, I have placed no weight on the Landlords’ submission that in February of 2020 the Landlords told the Tenants they would be selling the rental unit and that they wished to move into the rental unit on June 01, 2020. Even if the Tenants fully understood that the Landlords wished to move into the unit on June 01, 2020, the Landlords remained obligated to serve the Tenants with proper notice to end the tenancy on May 31, 2020.

I find that the Landlords' have failed to establish the merits of their Application for Dispute Resolution and I therefore dismiss the Landlords' application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have failed to establish the merits of their Application for Dispute Resolution and the entire Application for Dispute Resolution is dismissed, without leave to reapply.

This decision replaces the original decision and Order of December 14, 2020. The December 14, 2020 decision and Order has no force or effect.

As the Landlords have failed to establish grounds to retain the Tenants' security deposit of \$1,475.00, I find that the Landlords must return the deposit to the Tenants. I therefore grant the Tenants a monetary Order for \$1,475.00. In the event the Landlords do not voluntarily comply with this Order, it may be 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: April 14, 2021

Residential Tenancy Branch