



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDCT FFT

Introduction

The tenant seeks compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). A dispute resolution hearing was held on June 27, 2022, and in attendance were the tenant, the landlord, and the landlord's wife.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Issue

Is the tenant entitled to compensation?

Background, Evidence, and Facts

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The facts of this case that are undisputed are as follows:

The tenancy began on March 1, 2021. The tenancy was a one-year fixed-term tenancy that was to end on March 1, 2022, as per the written tenancy agreement. However, due to medical issues that the tenant's late brother (and then co-tenant) was experiencing, the tenant ended the tenancy before the fixed-term end of tenancy date.

The tenant had conversations with the landlord earlier but sent a follow up text confirming a move out date of October 9, and then November 1. This was later extended, at the suggestion of the landlord, to November 15, 2021. She paid the full rent for November (by way of a post-dated cheque), moved most of her belongings out of the property on November 8, and then did further cleaning until November 11.

A move-out inspection was conducted by the parties on November 13, which is also when the tenant handed the keys over to the landlord. New tenants took occupancy of the rental unit on November 17, 2021.

The facts of the case that are disputed, however, are as follows:

The tenant testified that the landlord and her had many conversations in which the landlord purportedly said that she would not have to pay the rent (or would receive a refund) if the landlord could rent out the rental unit on November 15. The tenant seeks \$1,356.00 which she argues represents the last two weeks of the month in which the new tenants were in the rental unit. And for which she was not in the rental unit.

The landlords dispute this version of events, and the landlord D.R. has no recollection of any such conversations about a refund. Indeed, a copy of an undated text message between the parties substantiates the landlord's version of what occurred:

Tenant: Hi [Landlord], You told me if the people moved in early you would pay me back half the month's rent. They moved in on the 17th.

Landlord: No I didn't say that... I allowed them to move in at there [*sic*] convenience because you moved out. I have not gotten any rent from the new tenants nor did I ask for any. The choice was yours as to when to move out this month. You moved out and we signed off on the damage deposit. I understand (to the best of my ability) what you may be going through, but you broke the lease and I had to find new tenants at a challenging time of the year

In their testimony, the landlords reiterated that it was the tenant who chose the move out date, and that it was agreed upon by the parties that the tenancy would end at the end of November 2021. The landlord's wife T.R. suggested that this dispute appears to be driven by the tenant's complaint around the new tenants moving in on November 17, earlier than anticipated. However, T.R. testified that the new tenants did not pay any rent for November.

In her brief rebuttal the tenant testified that she and the landlord " had multiple conversations" about refunding a portion of the rent. Moreover, she explained that the landlords did not tell her about new tenants moving in early, and that she was surprised by this.

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

In this dispute, the tenant has not established that the landlord breached the Act, the tenancy agreement, or any of the regulations. Rather, it was the tenant who breached the fixed-term tenancy requirement of the tenancy agreement. From the evidence before me, the tenancy ended on November 30, 2021 but the tenant chose to vacate early. And the tenant chose to pay the full month's rent for November.

Taking into consideration all the oral and documentary evidence before me, it is my finding that the tenant has not proven on a balance of probabilities that the landlord breached the Act, the regulations, or the tenancy agreement. Nor, for that matter, has the tenant proven her assertion that the landlord ever agreed to refunding any portion of the rent; there is no direct or circumstantial evidence to support this claim. Last, given that it was the tenant's choice to hand over the keys on November 13, there is nothing to prevent the landlord from letting the new tenants move in on November 17.

As no breach is proven I need not consider the remaining three parts of the above-noted test. Thus, the tenant's claim for compensation is dismissed.

As the tenant was not successful in her application, the claim for recovery of the application filing fee must be dismissed.

Conclusion

The application is hereby dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 27, 2022

Residential Tenancy Branch