



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss; 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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Applicant served the Respondent with copies of the Application for Dispute Resolution and Notice of Hearing, by mail, on September 15, 2011. The Respondent stated she received these documents on September 16, 2011.

The Respondent submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Preliminary Issue

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Residential Tenancy Act (Act)*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The Applicant, who presents himself as the landlord, stated that he leases this entire residential property from the owner of the property; that he rents out one self-contained rental unit to tenants; that he resides in the other self-contained rental unit; and that he shares his self-contained residence with other occupants, one of whom was the Respondent.

The Applicant stated that he is not an agent for the Landlord and that he works independently of the Landlord. He stated that he independently selects the people who will share his residence with him; that he collects security deposits from the people who will share his residence with him; that he holds the security deposits and does not forward them to the owner of the property; and that he is responsible for paying all the

rent for the residential property to his landlord even if he does not collect rent for the premises.

The Applicant stated that he entered into a verbal tenancy agreement with the Respondent; that she agreed to pay monthly rent of \$440.00 by the first day of each month; that she paid a security deposit of \$220.00 to him and that she moved into his rental unit on July 01, 2011.

The Respondent stated that she had a discussion with the Applicant regarding living together in the rental unit; that he told her that he was leasing the rental unit; that he told her that he would be collecting \$440.00 in rent and that he would be delivering it to the owner of the property; and that she paid a security deposit to the Applicant.

The Respondent stated that she believed the owner of the property was her landlord, although she did not discuss the terms of the agreement with that party prior to moving into the rental unit. She stated that the Ministry of Income and Employment Assistance also considered the owner of the rental unit to be the landlord and that they paid her August rent to the Landlord.

The Applicant and the Respondent agree that a Shelter Information Form was completed for this rental unit, on which the Applicant identified himself as the Landlord and a third party as the registered owner of the property. This document, which was submitted in evidence, supports the Applicant's position that he is the landlord.

The Applicant and the Respondent agree that the Ministry of Income and Employment Assistance paid the Respondent's rent for August, which was paid to the owner of the property. This fact corroborates the Respondent's testimony that she believed the owner of the property was her landlord.

The Applicant stated that the owner of the property did not initially cash the rent cheque for August as she did not want anyone to conclude that she had a tenancy agreement with the Respondent. He stated that she did cash the rent cheque after the Respondent vacated the rental unit because the Respondent had vacated and the owner was no longer concerned that a tenancy would be misconstrued; and that she paid the August rent to the Applicant. This testimony supports the Respondent's position that he is the landlord.

The Respondent submitted receipts for a deposit and a portion of a rent payment which were signed by the Applicant. These receipts support the Applicant's position that he is the landlord.

The Respondent submitted two Notices to End Tenancy, both of which identify the Applicant as the Landlord. These Notices support the Applicant's position that he is the landlord.

The Respondent submitted a letter from the owner of the property, dated September 05, 2011, in which the owner of the property released the Respondent from paying rent for September. This letter supports the Respondent's position that the property owner is the landlord, given that the owner appears to believe that she has some authority in the matter.

The *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

While I find there is documentary evidence that corroborates the Applicant's testimony that he was acting independently of the owner of the rental property, I find that the letter written by the owner of the property creates significant doubt. In the absence of a declaration from the owner of the property that the Applicant was not working independently of her, I simply cannot conclude that he was not acting as her agent.

As the evidence regarding whether Applicant was the landlord or an agent for the landlord is contradictory and I cannot conclusively decline jurisdiction, I find that it is appropriate that I assume jurisdiction.

Issue(s) to be Decided

The issues to be decided are whether the Landlord/Applicant is entitled to compensation for unpaid rent/loss of revenue; to retain all or part of the security deposit paid by the Respondent/Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Applicant/Landlord and the Respondent/Tenant agree that the Ministry of Income and Employment Assistance paid rent for August on behalf of the Respondent/Tenant and that the rent was paid to the owner of the rental unit.

The Applicant/Landlord and the Respondent/Tenant agree that the Applicant/Landlord personally served the Respondent/Tenant with a Ten Day Notice to End Tenancy on August 21, 2011, which declared that she must vacate the rental unit by August 31, 2011. The Respondent/Tenant stated that she did not dispute the Notice to End Tenancy because she intended to vacate the rental unit on August 31, 2011.

The Applicant/Landlord and the Respondent/Tenant agree that the Respondent/Tenant vacated the rental unit on September 01, 2011. The Applicant/Landlord stated that he was unable to find a new tenant to share his rental unit for September 01, 2011 because the Respondent/Tenant did not leave him her key on September 01, 2011; that she told him she would be returning, even though all of her personal belongings had been removed; and that she blocked one entrance to the rental unit with her electric wheelchair, which was not removed until September 02, 2011.

The Respondent/Tenant stated that her wheelchair could have been easily moved if it was blocking access to the rental unit; that she did not tell the Applicant/Landlord that she would be returning after September 01, 2011; that she moved her wheelchair and all of her belongings by noon on September 01, 2011; and that she returned her keys to the owner of the property on September 06, 2011.

The Applicant/Landlord is seeking compensation for loss of revenue from the month of September. He contends that he is entitled to compensation as the Respondent/Tenant told him that she would be returning after September 01, 2011 and she did not return her keys on the date she vacated the rental unit.

The Respondent/Tenant contends that she is not obligated to pay rent for September of 2011, as the owner of the property released her from this obligation.

The Respondent/Tenant contends that she was assaulted and intimidated by the Applicant/Landlord during this tenancy. The Applicant/Landlord contends that he was assaulted by the Respondent/Tenant during this tenancy and he denies her allegations of intimidation. I have made no conclusions regarding the allegations, as they are not relevant to my decision in this matter.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant agreed to pay monthly rent of \$440.00 by the first day of each month and that she paid a security deposit of \$220.00

On the basis of the undisputed evidence presented at the hearing, I find that the Respondent/Tenant's rent for August was paid to the owner of the rental property, who eventually paid it to the Applicant/Landlord. As I have been unable to conclude that the owner of the property was not the landlord in this tenancy, I cannot conclude that the August rent had not been paid.

Section 46 of the Act authorizes landlords to end a tenancy when rent has not been paid. As I have not been able to conclude that rent for August was not paid, I find that the Applicant/Landlord has not established that he had the right to end this tenancy pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence presented at the hearing, I find that on August 21, 2011 the Applicant/Landlord served the Respondent/Tenant with a Ten Day Notice to End Tenancy, pursuant to section 46 of the *Act*, which declared that the tenant must vacate the rental unit by August 31, 2011.

I find that the evidence supports the Respondent/Tenant's testimony that she accepted that the tenancy was ending on the basis of the Ten Day Notice to End Tenancy that was served to her. In reaching this conclusion I was heavily influenced by the undisputed evidence that all of the Respondent/Tenant's property was removed by September 01, 2011, with the exception of her wheelchair; and that her wheelchair was removed no later than September 02, 2011.

In determining that the Respondent/Tenant accepted that the tenancy was ending on the basis of the Ten Day Notice I placed little weight on the Applicant/Landlord's testimony that the Respondent/Tenant told him that she would be returning after September 01, 2011. I placed limited weight on this testimony, in part, because the Respondent/Tenant denied making the statement and, in part, because the actions of the Respondent/Tenant clearly showed she was vacating.

Section 44(1)(a) of the *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*. Although the Applicant/Landlord did serve the Respondent/Tenant a Ten Day Notice to End Tenancy, I find that he did not have the right to end this tenancy in accordance with section 46 of the *Act*. As no other notice to end tenancy was served by either party I cannot conclude that this tenancy was ended in accordance with section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Respondent/Tenant abandoned the rental unit. Given that the Respondent/Tenant acknowledged that she did not remove her wheelchair from the rental unit until September 01, 2011, I find that she abandoned the unit on that date. In reaching this conclusion I note that the

Respondent/Landlord provided insufficient evidence to corroborate his statement that she removed her wheelchair on September 02, 2011.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

Section 67 of the *Act* authorizes me to award compensation to a landlord if the landlord suffers damage or loss as a result of the tenant failing to comply with the *Act*. In these circumstances, I find that the loss of revenue experienced by the Applicant/Landlord was not sufficiently related to the Applicant/Tenant's breach of section 45 of the *Act* to warrant compensation for loss of revenue for September of 2011.

Section 7 of the *Act* requires landlords who claim compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. In my view the Respondent/Tenant vacated the rental unit on the basis of a flawed Notice to End Tenancy that was served to her by the Landlord. In my view the Applicant/Landlord has submitted insufficient evidence to establish that he had the right to serve the Tenant with the Notice to End Tenancy.

Of equal, or perhaps greater importance, I find that the owner of the property released the Respondent/Tenant from her obligation to pay rent for September. As the Applicant/Tenant has submitted insufficient evidence to corroborate his claim that he was not acting as an agent for the owner of the property, I find that I cannot conclude that the Respondent/Tenant remained obligated to pay rent for September.

For all of the aforementioned reasons, I dismiss the application for compensation for lost revenue from September of 2011.

Conclusion

I find that the Applicant/Landlord's application has been without merit and I dismiss his application to recover the filing fee for the cost of this Application for Dispute Resolution.

As the Applicant/Landlord has failed to establish that the landlord has the right to retain any portion of the security deposit paid by the Respondent/Tenant, I find that the deposit must be returned to the Respondent/Tenant. Based on these determinations I

grant the Respondent/Tenant a monetary Order for the amount \$220.00. In the event that the Applicant/Landlord does not comply with this Order, it may be served on the Applicant/Landlord, 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 *Residential Tenancy Act*.

Dated: November 29, 2011.

Residential Tenancy Branch