



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income?
2. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

On December 4, 2011, the Parties entered into a tenancy agreement. The copy of the tenancy agreement provided by the Landlords as evidence at the hearing states that it was for a fixed term commencing January 1, 2012 and expiring on April 30, 2012. The tenancy ended on March 30, 2012 when the Tenant moved out. Rent was \$580.00 per month. The Tenant paid a security deposit of \$290.00 at the beginning of the tenancy.

The Tenant claims that on December 4, 2011 he went with a friend solely to view the rental unit but was pressured by the Landlord, M.K., into signing a tenancy agreement. The Tenant said he advised the Landlords that he wasn't sure how long he would need the rental unit because he was uncertain how long he would be in the community for employment. The Tenant and his witness claimed that M.K. said the Tenant could move out at any time. The Tenant's witness said she was also present that day and had reservations about whether a boarding house was appropriate for the Tenant. The Tenant's witness said she asked M.K. if the Tenant could move out at the end of January 2012 if the living arrangement did not work out and M.K. said he could.

The Tenant and his witness claimed that at no time during their discussion with the Landlords was the Tenant advised that it would be a fixed term tenancy. The Tenant said the Landlords rushed him into signing a document which he believed was a rental application but later learned was a tenancy agreement. The Tenant said he did not have time to read the document but relied on the Landlords' assurances that he could move out any time. The Tenant said he was not given a copy of the tenancy agreement

(until the Landlords served him with their evidence package) and therefore did not realize until the end of the tenancy that he had signed a tenancy agreement for a fixed term.

The Landlords said the Tenant told them that he would be working for at least 4 months and that was why the tenancy agreement showed that it would end after 4 months. The Landlords said they explained this term of the agreement to the Tenant and denied telling him that he could move out at any time. The Landlords also denied rushing the Tenant into signing the tenancy agreement and instead claimed that the Tenant and his friend were late for an appointment and therefore they were the ones rushing to complete the tenancy agreement. The Parties agree that the Tenant was at the rental property for only 15 minutes during which time he viewed the room and common areas, had a discussion with the Landlords, paid his first month's rent and signed documents.

The Landlords admitted that they did not give the Tenant a copy of the tenancy agreement until after the tenancy ended. The Tenant's son gave evidence that he was present at the rental property on December 4, 2011 doing some repairs and recalled that he overheard the Landlords and Tenant discussing how long the Tenant would be staying and saw someone write that down. The Landlords' son said he also recalled counting out some money provided by the Tenant (for his first month's rent). The Tenant denied that the Landlords' son was present on December 4, 2011 and claimed instead he gave money (for the security deposit) to the Landlords' son on January 3, 2012.

The Parties agree that on February 24, 2012, the Tenant gave the Landlords verbal notice that he would be ending the tenancy at the end of March 2012. The Tenant said the Landlords did not ask him for written notice and had re-rented the rental unit to another tenant as of March 16, 2012. The Tenant said he moved out a day early so that the Landlords could prepare the rental unit for a new tenant. The Tenant said it was only on March 30, 2012 after inspecting the rental unit with the Landlords that he was advised by them they would not be returning his security deposit because he had a fixed term tenancy to the end of April 2012. The Parties agree that the Tenant gave the Landlords his forwarding address in writing on April 2, 2012.

The Tenant said the Landlords lied on their application for dispute resolution when they claimed that the rental unit had been vacant from the end of the tenancy to April 12, 2012. The Tenant said he returned to the rental property on April 18, 2012 and spoke to the new tenant of the rental unit. The Tenant said he was advised by the new tenant that he had moved into the rental unit on April 9, 2012 and three days later (or on April 12, 2012) was approached by the Landlords who asked him to move into another vacant suite across the hall until the end of April 2012 because that suite had been rented to another tenant for May 1, 2012. The Tenant said he believes the Landlords asked the new tenant to move out of the rental unit for April so they could manufacture a claim for lost rental income.

The Landlords admitted that they asked the new tenant of the rental unit if he wanted to move to the suite across the hall but argued that it was his choice whether he wanted to move or not. The Landlords also admitted that they had already rented the suite across the hall to another tenant for May 1, 2012 but argued that that tenant had not seen the suite across the hall and therefore would suffer no prejudice by moving into the rental unit instead when he arrived on May 1, 2012.

Analysis

The Tenant argued that the tenancy agreement signed on December 4, 2011 was invalid because he relied on the Landlords' representations that he could move out any time and was unaware that they had him sign a fixed term tenancy agreement. The Tenant also argued that he would not have entered into the tenancy agreement had he known it was for a fixed term because he did not know how long he would be working in the community. The Landlords denied telling the Tenant he could move out at any time and argued that the Tenant was given an opportunity to read the tenancy agreement and that he signed it and initialled the sections acknowledging that it was for a fixed term.

Where the evidence of the Parties on this issue differs, I preferred the evidence of the Tenant as I found that the Landlords were not forthright in this matter and attempted to mislead these proceedings on a critical point. In particular, the Landlords wrote in the details portion of their application "the rental unit is vacant to this date, April 12, 2012." I find as a fact that this was untrue in that a new tenant rented the rental unit as of April 1, 2012 and moved into the rental unit on April 9, 2012. Furthermore in her oral evidence, the Landlord, M.K., initially suggested that the new tenant of the rental unit approached her about moving to a new suite in the rental property and it was only after persistent questioning that she admitted that it was she who approached the new tenant about moving out of the rental unit and that this was not something that she would normally have done.

I also find it significant that the Landlords did not give the Tenant a copy of the tenancy agreement although they claim it is their practice to do so with each of their tenants. Section 13(3) of the Act says that a Landlord must provide a Tenant with a copy of a tenancy agreement within 21 days of signing it. As the Tenant was not given a copy of the tenancy agreement until after the tenancy ended, I find that the Landlords breached section 13 of the Act. As a further result, I cannot conclude that information on the tenancy agreement regarding when the fixed term was to end was even inserted on the tenancy agreement at the time that the Tenant signed the agreement.

Furthermore, I cannot give a lot of weight to the evidence of the Landlords' son who claimed that on December 4, 2012 he overheard the parties discussing the term of the tenancy and saw them write it down. I find that this evidence is unreliable given that this witness also gave evidence that he was "passing in and out of the hallway" where the parties were discussing the tenancy agreement and did not have an opportunity to

witness everything including the parties signing the agreement. I further find this evidence unreliable given the evidence of the Tenant that he did not recall the Landlords' son being present at all that day.

For all of these reasons, I find on a balance of probabilities that the Landlords likely did tell the Tenant that he could move out at any time given the uncertainty of his work obligations. I find that at the time of signing the tenancy agreement, the Landlords knew the Tenant was in a rush and based on their assurances, he signed the tenancy agreement without reading it. I further find that the Tenant would not have entered into the tenancy agreement had he known that he was required to commit to a fixed term tenancy. As a result, I find that this was a material misrepresentation that entitled the Tenant to rescind the tenancy agreement.

In the absence of a tenancy agreement, the tenancy is deemed to be on a month to month basis. Section 45(1) of the Act says that a tenant of a periodic tenancy must give a Landlord one clear month's notice in writing that they are ending the tenancy. If a Tenant fails to do so, he may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Tenant gave the Landlords verbal notice on February 24, 2012 that he was ending the tenancy at the end of March 2012. I find that as of March 16, 2012, the Landlords had re-rented the rental unit for April 1, 2012 and received a full month's rent from the new tenant for that rental unit. Although the new tenant of the rental unit moved out of the rental unit on April 12, 2012 at the request of the Landlords, I find that the Landlords cannot rely on this to recover a loss of rental income from the Tenant for all or part of that month. In other words, I find that the rental unit was re-rented for April 2012 and that the only reason the Landlords lost any rental income for that suite was due to their own act of removing the new tenant from that unit and in doing so I find that they have failed to mitigate their losses as required by s. 7(2) of the Act.

Consequently, the Landlords' application is dismissed without leave to reapply. The Landlords also argued that they were entitled to recover liquidated damages of \$290.00 as a result of the Tenant ending the tenancy early. However, given that I have found that the Tenant was entitled to rescind the fixed tenancy agreement due to a material misrepresentation, the term in that agreement regarding liquidated damages is also of no force and effect. As a result, the Landlords' application is dismissed in its entirety and ***I Order the Landlords pursuant to s. 38(1) of the Act to return the Tenant's security deposit of \$290.00 to him forthwith.***

Conclusion

A Monetary Order in the amount of \$290.00 has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 04, 2012.

Residential Tenancy Branch