



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlords application of April 4, 2013 seeking a monetary award for unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off on the grounds that the tenants breached their fixed term rental agreement by leaving the tenancy early.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Background, Evidence and Analysis

This tenancy began on June 1, 2012 under a fixed term rental agreement set to end variously on July 31, 2012, July 31, 2013 or August 31, 2013, the variation occurring on three different lines of the rental agreement. Rent was \$1,600 per month and the landlord holds a security deposit of \$800 paid on May 1, 2012.

By verbal notice given in mid-February 2013, email notice given on February 28, 2013 and written notice received by the landlord on March 2, 2013, the tenants advised the landlords that they would be vacating the rental unit on April 1, 2013.

While the landlords had initially claimed for three months loss of rent, they advised during the hearing that they had been able to find new tenants for May 15, 2013 and reduced their claim to one and one-half months' rent, a total of \$2,400.

The attending tenant stated that the landlords did not have a valid claim for breach of the fixed term agreement as the document was flawed. The agreement says that the tenancy is to last for 14 but does not specify units of time (normally months), then says it is to end on July 31, 2012, an error in the year which appears to have been intended to mean July 31, 2013. In subsequent correspondence, the landlord quoted the end date as August 31, 2013.

The landlord stated that, despite the technical errors, the parties clearly understood that the agreement was for a fixed term to the summer of 2013 as the tenants had provided post dated cheques to June 1, 2013. The fixed term component of the agreement also indicates that the tenants must vacate at the end of the tenancy.

Analysis

I find that the rental agreement is flawed, but not fatally so.

Given the submission of post dated cheques and the fact that the tenancy did not end on July 31, 2012, I find that there was a “meeting of the minds” and a clear intention on the part of both parties that the tenancy was for a fixed term of over a year. I find that any reasonable person would discern that the ambiguities were a result of haste or carelessness in creating the contract.

Section 45 of the *Act* states that a tenant’s notice to end a fixed term agreement cannot take effect before the end of tenancy date stated on the agreement. Section 7 of the *Act* states that, if either party to a rental agreement suffers a loss due to the other’s breach of the rental agreement or legislation, the non-compliant party must compensate the other for the loss. Section 7 imposes a duty on the claimant to do whatever is reasonable to minimize their loss and I find advertisements submitted by the landlord meet that requirement.

I find that the tenants breached the fixed term agreement and section 45 of the *Act* by leaving the tenancy early..

However, I find that the landlords breached section 13 of the Act by the previously noted errors in drafting the rental agreement, to which I would add a misspelling of the landlords' address for service.

Having found that both parties breached the Act, I find that the consequent loss should be shared equally between them

Therefore I find that the landlords are entitled to a monetary award for one half of the \$2,400 loss of rent for April and one half of May 2013, a total of \$1,200.

As the landlords' initial carelessness in completing the rental agreement contributed to this dispute, I decline to award the filing fee.

As authorized under section 72 of the Act, I hereby order that the landlords retain the tenants \$800 security deposits in set off against the balance owing and issue a Monetary Order for the \$400 remainder..

Conclusion

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$400** for service on the tenants.

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: June 27, 2013

Residential Tenancy Branch