



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 15, 2013, by the Landlords to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord confirmed receipt of the Tenant's evidence and testified that he did not send copies of his evidence to the Tenant.

The Landlord confirmed that they did not provide the Tenant with copies of their evidence which I find to be a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenant has not received copies of the Landlords' evidence I find that the Landlords' evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy that began on November 1, 2012 and was set to end on October 31, 2013. Rent was payable on the 1st and 15th of each month in the amount of \$1,275.00 and on November 1, 2012, the Tenant paid \$625.00 as the security deposit. The Tenant vacated the property as of July 15, 2013, and had provided her forwarding address to the Landlords by e-mail on June 18, 2013. No move-in or move-out condition inspection report forms were completed.

The Landlord testified that he is seeking compensation for loss of rent due to the Tenant ending her fixed term tenancy early. He wished to amend his application to recover only one month's rent because he was able to re-rent the unit effective August 15, 2013. He entered into the new tenancy agreement as of July 21, 2013, and his new tenants are paying a lower amount of rent of \$1,100.00.

The Landlord argued that he mutually agreed to end the fixed term tenancy agreement with the condition that the Tenant pay them two month's rent as compensation. He argued that he informed the Tenant of these terms, in an e-mail, before June 12, 2013 which is when he signed the mutual agreement to end the tenancy, but he could not find that e-mail.

The Tenant testified that this relationship deteriorated long before June 2013 as they were discussing ending the tenancy back in February or March, but the Landlord failed to proceed with the mutual agreement. She stated that at no time did she agree to pay the Landlords compensation because they were mutually agreeing to end the tenancy.

The Tenant referenced several of the e-mails she provided in evidence and noted that on June 16, 2013 she received an e-mail from the Landlord which confirms they mutually agreed to end this tenancy. She also pointed to the mutual agreement document that both parties signed on June 12, 2013. She indicated that she filled out the form and signed it and then e-mailed it to the Landlords for their signatures. When she got it back with the Landlord's signature she noticed that the Landlord had added statements that indicated she would have to pay two month's rent. She had never agreed to this stipulation. She indicated that the Landlord may have said at one time that he wanted compensation but at no time had she agreed to such a stipulation.

In closing, the Landlord stated that the information provided by the Tenant was correct. He pointed to an e-mail he sent her dated June 10, 2013 at 7:50 p.m. where he states “we are losing two month’s rent”, as support that he wanted compensation. He could not find an e-mail where he had clearly indicated that the Tenant would be required to pay two month’s compensation in order to obtain his agreement to end this tenancy.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 44(1) of the Act stipulates that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) 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;

(c) the landlord and tenant agree in writing to end the tenancy; [my emphasis added]

- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

In this case there is undisputed evidence that the parties mutually agreed to end this tenancy effective July 15, 2013, as supported by the signed mutual agreement. What is in dispute is if the parties agreed to end the tenancy with the term that the Tenant would pay the Landlord compensation.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlords have the burden to prove the parties agreed that the Landlords were entitled to compensation for mutually agreeing to end the tenancy.

The Landlord alleged that he sent the Tenant an e-mail, prior to June 12, 2013, where he informed her that she would be required to pay him two month's rent in order for him to sign the mutual agreement to end the tenancy. Then, during this hearing he changed his claim to be for loss of rent for the period of July 16th to August 15, 2013, which is when the new tenants took possession.

The Tenant provided volumes of evidence which clearly indicate that she refused to pay the Landlords compensation to end this tenancy. She also had evidence to support that she was not directly told about the requirement of two month's compensation until the e-mails mid June 2013 surrounding the creation and signing of the mutual agreement. The Landlord admitted to writing this stipulation on the mutual agreement after the Tenant and he had signed the document, and without the Tenant's approval.

Based on the above, I find this tenancy ended by mutual agreement on July 15, 2013, in accordance with section 44(1)(c). I further find that there is insufficient evidence to prove the Tenant had a financial obligation to pay the Landlords compensation for entering into the mutual agreement. Therefore, the Tenant had no financial obligation to the Landlords once the tenancy ended July 15, 2013. Accordingly, I hereby dismiss the Landlords' application, without leave to reapply.

The Landlords have not been successful with their application; therefore I decline to award recovery of the filing fee and I hereby order the Landlords to return the Tenant's security deposit plus interest (\$650.00 + \$0.00 interest) in the amount of **\$650.00** forthwith.

Conclusion

I HEREBY DISMISS the Landlords' application, without leave to reapply.

The Tenant has been awarded a Monetary Order in the amount of **\$650.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not 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 *Residential Tenancy Act*.

Dated: October 18, 2013

Residential Tenancy Branch

