



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is shown as from April 1 to July 31, 2013. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

There are 2 slightly different copies of the tenancy agreement in evidence. The copy submitted by the landlord shows a ticked box indicating that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time. On this copy the parties have also initialled the boxes ("Landlord's Initials" & "Tenant's Initials") which reflect agreement that at the end of the fixed term the tenants must move out of the unit, although the corresponding box is not ticked.

The copy of the tenancy agreement submitted by the tenants is identical except that the tick entered into the box, as above, appears to have been stroked out. As well, an additional set of tenant's initials has been entered into the "Tenant's Initials" box.

In summary, there is a measure of ambiguity in the tenancy agreement where it concerns what is to occur at the end of the fixed term.

Further evidence includes a receipt issued by the landlord dated July 2, 2013, in which she acknowledges receipt of the tenants' post-dated rent cheque for August 2013. The receipt notes "Post-dated & tendered on July 2, 2013." The landlord testified that she thinks she received this post-dated cheque on or about July 1, 2013.

Thereafter, by e-mail dated July 16, 2013, the tenants gave notice to end tenancy effective August 15, 2013. Subsequently, by e-mail thought to be dated several days later, the tenants informed the landlord that they would "be out by July 31st" and they requested the return of their post-dated rent cheque for August 2013. It is thought that the tenants finished vacating the unit within the first 2 or 3 days of August 2013.

The tenants did not provide the landlord with a forwarding address. By way of her own inquiries the landlord determined a forwarding address, and the tenants' agent confirmed that the landlord's hearing package was received at that address. The tenants' agent also testified that the address used for service is no longer applicable, and he provided his own address as an "in-care-of" address for the tenants.

The landlord filed her application for dispute resolution on August 12, 2013, and began on-line advertising for new renters around the same time. Ultimately, new renters were found effective September 1, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony, I find on a balance of probabilities that while the parties entered into a fixed term tenancy, they also agreed that at the end of the fixed term the tenancy would continue on a month-to-month basis. In short, I find that the fixed term tenancy became a periodic tenancy following the end of the fixed term on July 31, 2013.

While the tenancy agreement itself has been completed in a somewhat ambiguous manner, I find that the intent of the parties is mainly reflected in the tenants' issuance and the landlord's receipt of a post-dated rent cheque for August 2013, which is the first month following the end of the fixed term on July 31, 2013.

Following from all the above, I find that tenants' manner of giving notice to end the periodic tenancy does not comply with the above statutory provisions. I further find that, all things considered, the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. Accordingly, I find that the landlord has established entitlement to a claim of **\$1,250.00**, which is comprised of unpaid rent / loss of rental income of \$1,200.00 for August 2013, in addition to the \$50.00 filing fee.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I hereby order that the landlord retain the security deposit of **\$600.00**, and I grant the landlord a **monetary order** for the balance owed of **\$650.00** (\$1,250.00 - \$600.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$650.00**. Should it be necessary, this order may be served on the tenants, filed in the 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 20, 2013

Residential Tenancy Branch

