Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD MNR FF

Introduction

This hearing was convened in response to cross-applications by the tenant and landlord under *the Residential Tenancy Act* (the Act). The tenant applied to dispute a 1 Month Notice to End Tenancy, for the landlord to comply with the Act and recover the filing fee. The landlord filed for a Monetary Order for unpaid rent and to retain the security deposit in partial satisfaction of the claim and to recover the filing fee. Both parties participated in the hearing with their submissions and testimony during the hearing. The parties were also provided with opportunity to resolve and settle their dispute to their mutual satisfaction.

The tenant informed the hearing that they vacated the unit August 01, 2014, however did not cancel their application disputing the landlord's Notice. As a result the *tenant's application* is preliminarily **dismissed** and the hearing proceeded on the merits of the landlord's application.

The landlord acknowledged receiving the evidence of the tenant; however, they did not provide the tenant with a package of their own evidence received by the Branch August 02, 2014. As a result that evidence was determined to be inadmissible. Regardless of which, the landlord and tenant were each given opportunity to orally provide their respective evidence and opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed *relevant* testimony in this matter is as follows. The tenancy started November 01, 2013 and ended August 01, 2014. Under the tenancy agreement rent in the amount of $750.00 was payable in advance on the first day of each month establishing the rental period as the first of each month to the last day of each month . The parties agree that at the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $380.00, which the landlord retains in trust. It is undisputed that on July 01, 2014 the tenant received a 1 Month Notice to End Tenancy for Cause which the tenant filed to dispute 2 days later and served the landlord with their dispute as required. The effective date of the Notice was erroneously stated as August 01, 2014. On July 18, 2014 the tenant provided the landlord a written Notice that they were vacating August 01, 2014; however, further informed the landlord in the same Notice that they were not cancelling their hearing of this date, because of unspecified "unresolved issues" – which the hearing was informed, intended to mean the security deposit. The landlord testified that they were acting in accordance with the tenant's dispute to challenge the 1 Month's Notice and continue the tenancy. None the less, the landlord immediately began advertising the rental unit for August 01, 2014 to no avail. In their application the landlord seeks loss of revenue for August, and September 2014, for the tenant's failure to provide the required Notice to End/vacate as prescribed by the Act. The tenant disputes the landlord's claim as the landlord had at least 12 days to find a new tenant. The landlord also seeks to retain the security deposit claiming the tenant left the rental unit unclean. The tenant disputes this claim as the landlord did not conduct a move out inspection and has not provided evidence for this claim.

Analysis

On preponderance of the relevant evidence in this matter, I have reached a Decision upon the following findings. A full copy of the Residential Tenancy Act and other publications can be accessed at: www.rto.gov.bc.ca.

I find the landlord's 1 Month Notice to End for Cause, while dated as effective August 01, 2014, according to the Act was effective *August 31, 2014*; and, is automatically adjusted by **Sections 47(2) and 53** of the Act to reflect the legal effective date for the Notice. Despite disputing the landlord's Notice to End the tenant then changed their

position and determined to vacate 1 month earlier than the landlord's Notice and were therefore required to provide the landlord with Notice to End in accordance with the Act. I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to End the tenancy in accordance with **Section 45** of the Act, which in relevant part states as follows,

Tenant's notice

> **45** (2) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective 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.
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45. However, I find that while the Act requires tenants to give one *full month's* notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to loss of revenue. That is, there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, **Section 7** of the Act does provide as follows:

> **7. 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.
>
> 7(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.

As a result of the tenant's non-compliance with the tenancy agreement or the Act, I accept the landlord's evidence that under the circumstances with which they were presented the landlord took immediate steps and did what was *reasonable* to minimize and avert loss of revenue for August 2014. On the evidence provided in this matter, I find the landlord has met the above test for loss. I find the landlord is owed compensation for loss of revenue for August 2014 in the amount of **$750.00**.   The

landlord is not entitled to loss of revenue for an additional month for an illegal Notice by the tenant. I also find the landlord has failed to provide sufficient evidence to support their claim of an additional amount for cleaning. As a result, the balance of the landlord's claim *is dismissed*, without leave to reapply. As the landlord was partially successful in their application, they are entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

loss of revenue for August 2014	$750.00
filing fee	50.00
Less security deposit	*-380.00*
Total monetary award to landlord	**$420.00**

Conclusion

The tenant's application is **dismissed**, without leave to reapply.

I Order that the landlord may retain the security deposit in the amount of $380.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **$420.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 02, 2014

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Residential Tenancy Branch