



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yorktown Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of double the \$440.00 security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties each received the other's application and hearing documents.

The tenant did not receive the landlord's evidence, which was posted to the tenant's door. The tenant has vacated, so was not at the unit to receive the evidence.

The parties each had a copy of the tenancy agreement; the copy of the 10 day Notice to end tenancy issued by the landlord was not before the tenant. The landlord's evidence contained those 2 documents and the tenant's written notice ending tenancy.

The landlord's application included a detailed calculation for compensation for loss of rent revenue and parking fees.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and parking fees.?

May the landlord retain the security deposit paid by the tenant or is the tenant entitled to return of double the deposit?

Background and Evidence

The tenancy commenced on July 1, 2013; rent was \$880.00 due on the 1st day of each month. A security deposit in the sum of \$440.00 was paid. The tenancy agreement supplied as evidence indicated that the deposit paid was \$220.00; the landlord confirmed the deposit was \$440.00.

The tenancy agreement included a term for parking; \$20.00 for each vehicle.

The 1 year fixed term ended on June 30, 2014; the tenancy then converted to a month-to-month term.

The tenant and a co-tenant signed the tenancy agreement. Each paid rent to the landlord in the sum of \$440.00, sent in 2 cheques, directly, from a government agency.

The co-tenant vacated at the end of May 2014.

The landlord claimed against the security deposit on August 11, 2014.

There was no dispute that in July 2014 the landlord received \$700.00 rent. The landlord received the \$440.00 direct payment and by June 27, 2014 he received another \$240.00. A receipt was issued on June 27, 2014 setting out the payments made.

On July 7, 2014 the landlord issued a 10 day Notice to end tenancy for unpaid rent. The Notice was posted to the tenant's door on that date. The tenant did not dispute the Notice. The landlord confirmed that by June 30, 2014 he had received a letter from the tenant's advocate, providing written notice ending the tenancy effective the end of July. The letter was provided as evidence; which contained the tenant's written forwarding address.

The tenant said when she left the \$240.00 payment for the landlord it was some time around July 24, 2014. When this payment was made she also dropped the keys to her unit in the drop box. The tenant's witness said she was at the unit on July 24, 2014 to assist the tenant with moving. On that date the witness and landlord had a heated exchange over disposal of garbage.

The landlord said that he had been approached by the tenant with a request she be given an extra 10 days to move out; beyond July 31, 2014. The \$240.00 payment was for those 10 days. The landlord did not receive any further rent payments after the July 27, 2014 receipt was issued. He gave notice and entered the unit and found multiple packed boxes. The landlord left the boxes as he did not believe the tenant had vacated. The landlord is claiming the loss of rent for August, September and October, 2014 in the sum of \$2,640.00. As the tenant had not vacated the landlord could not take possession of the unit.

The landlord claimed compensation in the sum of \$240.00 for 10 months of parking which was never paid. This is based on the term of the tenancy requiring a \$20.00 payment for each car.

The tenant said she did not request an extension of time to remain in the unit. The tenant had rented a new home effective July 1, 2014 and was financially stressed, having to pay rent in 2 places for that month. Her relationship with the landlord was not pleasant and she felt threatened. The tenant had heard the witness and landlord yelling at one another and this had further scared her. The tenant left the unit on July 24, 2014 and never returned. The tenant said she did abandon boxes at the unit and that she has no desire to retrieve them.

The tenant did not understand that she was also responsible for the parking costs. The co-tenancy had a vehicle; so she did not pay attention to this term of the tenancy agreement.

Analysis

There was no dispute that the landlord is owed July 2014 in the sum of \$200.00. The landlord received a \$440.00 and \$240.00 payment and issued a receipt. Therefore, I find, pursuant to section 65 of the Act, that the landlord is entitled to compensation in the sum of \$200.00 for the balance of July 2014 rent owed.

I find that the tenancy ended effective July 31, 2014; the date given to the landlord, in writing by the tenant, by way of the June 30, 2014 letter. This notice was given in accordance with section 45 of the Act.

I have rejected the landlord's submission that as boxes were left in the unit he could not enter or remove those items. I find that the landlord has failed to mitigate the claim made by utilizing the provisions of the legislation and removing the boxes so the unit could be rented again. The landlord provided no evidence in support of his claim that the unit appeared to be lived in and I find his submission that packed boxes indicated someone was living in the unit, insufficient proof of residence. In the absence of evidence showing the tenant was living in the unit I prefer the weight of the tenant's written notice that she was going to vacate at the end of July. The Residential Tenancy Regulation allows a landlord to consider property abandoned if it remains in the unit after the tenancy has ended. The landlord was then in a position to treat the property, as set out by the Regulation, and remove it after July 31, 2014.

I have rejected the submission that the \$240.00 payment made in July 2014 was for another 10 days in the unit, for part of August. Ten days rent would have totalled \$290.00. It also appears highly unlikely the tenant would have had the means to make this payment as she commenced renting her new unit on July 1, 2014.

I find that the landlord failed to take any steps to mitigate the loss claimed by removing the tenant's property and advertising the unit for rent. The landlord was in a position to accept the tenant's written notice and her continued absence from the unit indicated she had vacated. Therefore, in the absence of any attempt to mitigate the loss I find that the claim for loss of August, September and October 2014 rent revenue is dismissed. Further, no other attempts to contact the tenant were made. I found the landlord's assertion the tenant continued to live in the unit, while not paying rent for 3 months, lacked credibility. The landlord had a notice ending tenancy which he ignored.

The tenancy agreement set out the requirement to pay \$20.00 parking for each vehicle. The term does not set out the frequency of payment required. The tenant did not dispute the term. Therefore, I find that the landlord is entitled to compensation in the sum of \$240.00 for parking for the 10 months claimed.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

As I have found the tenancy ended effective July 31, 2014 and the landlord has applied to retain the deposit within 15 days, I find that the tenant is entitled to return of the \$440.00 deposit; less the sums owed to the landlord. The request by the tenant for double the security deposit is dismissed.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

As the landlord is owed \$490.00 I grant the landlord a monetary Order for the balance of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent and parking fees.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2014

Residential Tenancy Branch

