



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF, O

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, for "other", and to recover the fee for filing this Application for Dispute Resolution. In the Landlord's Monetary Order Worksheet he declares that he is seeking \$2,700.00 for unpaid rent.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch with the Application were sent to the Tenant, via registered mail, although he cannot recall the date of service. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue?

Background and Evidence

The Landlord and the Tenant agree that:

- they signed a tenancy agreement for a tenancy that began on April 01, 2015;
- the Tenant was permitted to move into the rental unit prior to April 01, 2015;
- the tenancy agreement was for a fixed term, the fixed term of which ended on March 31, 2016;
- the tenancy agreement declares that rent was \$1,350.00;
- the parties both understood that rent was actually \$1,250.00 and \$100.00 was for hydro; and
- rent was due by the first day of each month.

The Landlord stated that the Tenant was served with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by July 01, 2015. He stated that he is not certain, but he believes this Notice to End Tenancy was mailed to the Tenant on June 02, 2015.

The female Tenant stated on May 29, 2015 the Landlord's son personally served a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by July 01, 2015.

The female Tenant stated that the Tenant did not file an Application for Dispute Resolution to dispute this Notice to End Tenancy and that the Tenant vacated the unit on July 01, 2015 in accordance with the Notice to End Tenancy. She stated that she asked the Landlord if she could stay past July 01, 2015 and because he would not agree to an extension she had all of her property moved by the evening of July 01, 2015.

The Landlord stated that the Tenant remained in the rental unit until sometime in early July of 2015. He stated that he is not certain when the Tenant left the unit but when his son went to the unit sometime after July 05, 2015 his son determined that the rental unit had been vacated.

The Landlord submitted a series of electronic messages the parties were exchanged prior to the end of the tenancy, which include:

- a message dated May 29th in which the female Tenant mentions that an "eviction notice" was just delivered;
- a message dated June 30th in which the female Tenant informs the Landlord that her parents have moved their belongings and she asks for permission to remain in the rental unit until July 02nd because she cannot move into her new unit until July 02nd;
- a message dated July 01st in which the Landlord declared he did not know that the Tenant was going to "abide by the eviction notice" and that he is willing to accept "one half a months rent" (sic);
- a message dated July 01st in which the female Tenant indicates that she will speak with the Tenant (about the offer to pay one half of one month's rent);
- a message dated July 01st in which the female Tenant asks the Landlord would like the keys in the middle or the end of the month;
- a message dated July 01st in which the Landlord declared that the keys should be returned in the middle of the month "if you decide to stay till the middle of the month" or the keys should be returned at the end of the month "if you decide to stay till the end of the month";
- a message dated July 04th in which the Landlord asks if the female Tenant has spoken to the Tenant (presumably about when the unit will be vacant);
- a message dated July 5th in which the female Tenant stated that the unit has "been cleared since the 2nd";

- a message dated July 5th in which the female Tenant stated that a few “odds and ends” were cleared out on the morning of July 2nd.

The Landlord stated that his original Application for Dispute Resolution included a claim for lost revenue for July and August of 2015, in the amount of \$2,700.00.

At the hearing the Landlord stated that he would like to reduce the amount of his claim for lost revenue to include a claim of \$1,250.00 in rent for July of 2015, as he is not seeking the \$100.00 for hydro for that month, rather than \$1,350.00. At the hearing the Landlord stated that he would like to reduce the amount of his claim for lost revenue to include a claim of \$625.00 in rent for August of 2015, as he was able to rent the unit to a third party for August 15, 2015.

The Landlord stated he did not need to advertise the rental unit because a third party was approached him and indicated they would like to rent the unit. He stated that he cannot recall exactly how that third party knew the rental unit was vacant. He subsequently stated that his ex-wife told his son that she would like to rent the unit; he believes his ex-wife expressed an interest in the unit sometime during the second week of August of 2015; that his ex-wife was not able to move into the rental unit until August 15, 2015; that he agreed to “hold” the unit for his ex-wife; and that his ex-wife did move into the rental unit on August 15, 2015.

The female Tenant stated that she does not think the Tenant should be able to pay any money for lost revenue as the rental unit was vacated in compliance with a Notice to End Tenancy that was served to the Tenant.

The Landlord is seeking compensation for costs associated to mailing hearing documents to the Tenant.

Analysis

On the basis of the undisputed evidence I find that the parties entered into a fixed term tenancy agreement, the fixed term of which started on April 01, 2015 and end on March 31, 2016, and that the Tenant agreed to pay monthly rent of \$1,250.00 for the duration of the tenancy.

When a tenant ends a fixed term tenancy prematurely, either by giving notice or by giving the landlord cause to serve a notice to end tenancy, the tenant, in some circumstances, remains obligated to pay the rent for the duration of the fixed term tenancy.

On the basis of the undisputed evidence I find that the Tenant was served with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by July 01, 2015. As the Tenant did not file an Application for Dispute

Resolution disputing this Notice to End Tenancy I find that the tenancy ended on July 01, 2015 on the basis of this Notice, pursuant to section 47(5) of the *Residential Tenancy Act (Act)*. As the tenancy ended on July 01, 2015 I find that the Tenant was obligated to vacate the rental unit by July 01, 2015.

On the basis of the testimony of the Landlord, I find that he does not know when the rental unit was fully vacated, as he can only say it was vacant when his son went to the unit sometime after July 05, 2015.

I find that the female Tenant's testimony that the rental unit was fully vacated on July 01, 2015 is inconsistent with the messages she sent on July 5th in which she declared, on two occasions, that all of the Tenant's property was moved July 2nd. I find that the Tenant's message from July 05, 2015 is more reliable than her testimony of January 21, 2016, given that her memory may be impaired due to the passage of time. I therefore find that the rental unit was fully vacated on July 02, 2015.

As the Tenant did not vacate the rental unit by July 01, 2015 I find that the Tenant must pay rent for the two days in July that he occupied the rental unit, at a per diem rate of \$40.32, which equates to \$80.64.

In adjudicating this matter I have not considered whether the Landlord had grounds to end this tenancy in accordance with section 47 of the *Act*, is that is not directly relevant to the issue in dispute at these proceedings. In the event the Tenant did not believe the Landlord had grounds to end the tenancy, the Tenant had the right to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. As the Tenant did not file an Application for Dispute Resolution disputing this Notice to End Tenancy the Tenant must accept the consequences of the tenancy ending prematurely.

I find that this tenancy ended prior to the end of the fixed term of the tenancy either as a result of the actions of the Tenant, in the event the Landlord had cause to end the tenancy, or as a result of the inactions of the Tenant, in the event the Landlord did not have cause to end the tenancy and the Tenant simply opted not to dispute the One Month Notice to End Tenancy. I therefore find that the Landlord is entitled to seek compensation for revenue that has been lost as a result of the premature end of the tenancy.

On the basis of the undisputed evidence, I accept that the Landlord has not collected rent for the period between July 01, 2015 and August 14, 2015 as a result of this tenancy ending prematurely.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize the lost revenue he experienced between July 01, 2015 and August 14, 2015 by advertising in a timelier manner.

In reaching the conclusion that the Landlord did not take reasonable steps to mitigate his lost revenue I was heavily influenced by his testimony that he never advertised the rental unit. Had the Landlord advertised the rental unit prior to the end of June of 2015 I find it entirely possible that the Landlord would have found a new renter for July 02, 2015.

As the Tenant did not dispute the One Month Notice to End Tenancy that declared he must vacate the rental unit by July 01, 2015, the Landlord should have understood the Tenant was obligated to vacate the rental unit by July 01, 2015 and advertised accordingly. The Tenant was under no obligation to advise the Landlord that he intended to comply with the Notice, as there is a conclusive presumption that he would comply with a Notice to End Tenancy that is not disputed.

I favour the testimony of the female Tenant, who stated that the One Month Notice to End Tenancy was personally served on May 29, 2015 over the testimony of the Landlord, who stated that the One Month Notice to End Tenancy was mailed to the Tenant on June 02, 2015. I favoured the testimony of the female Tenant because it is corroborated by the electronic communication she sent on May 29, 2015.

As the Tenant received the One Month Notice to End Tenancy on May 29, 2015 and it was not disputed within ten days, the Landlord should have advertised the rental unit on, or shortly after, June 09, 2015.

Even if the Landlord did not understand that he had the right to advertise the rental unit in June of 2015, he should have advertised the rental unit as soon as it had been vacated, which was July 02, 2015.

On the basis of the electronic communications submitted in evidence I find that on June 30, 2015 the female Tenant informed the Landlord that her parents had vacated the rental unit and she asked if the Landlord would be willing to allow her to remain in the unit for one additional day as she cannot get into her new unit until July 02, 2015. The Landlord responds to this message by advising the Tenant additional rent is due without telling her whether she can remain in the unit until July 02, 2015.

As the Landlord had been advised that the male Tenant had moved his property and the female Tenant is moving into her new home on July 02, 2015, I find that the Landlord should have understood the rental unit would be vacant by July 02, 2015 and advertised the rental unit accordingly.

The undisputed evidence is that the Landlord never advertised the rental unit and that sometime during the second week of July of 2015 his ex-wife expressed an interest in the rental unit. Had the Landlord immediately advertised the rental unit in a timelier manner I find it entirely possible that the Landlord may have found a new tenant prior to his ex-wife expressing an interest in the rental unit in mid-July.

As the Landlord did not take reasonable steps to mitigate the lost revenue he experienced, I dismiss the Landlord's claim for lost revenue for July and August of 2015.

The Landlord has claimed compensation for Canada Post fees for costs of mailing documents related to this dispute resolution proceeding. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim to recover Canada Post fees.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$130.64, which is comprised of \$80.64 in unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$130.64. In the event the Tenant does not voluntarily 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.

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: January 22, 2016

Residential Tenancy Branch