



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlords stated that the tenants were served with the notice of hearing package via Canada Post Registered Mail on September 28, 2015. The tenants confirmed receipt of the notice of hearing package in this manner.

Both parties confirmed that the landlords served the tenants with the landlords' submitted documentary evidence and that no evidence was submitted by the tenants.

I accept the undisputed affirmed evidence of both parties and find that the tenants were properly served with the notice of hearing package and the landlords' submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2014 on a fixed term tenancy ending on July 31, 2015 and then thereafter on a month-to-month basis. The monthly rent is \$1,350.00 payable on the 31st day of each Monday. A security deposit of \$675.00 was paid on July 2, 2014.

The landlords stated that the tenants provided notice to vacate the rental premises via email on June 1, 2015 to end the tenancy on June 30, 2015. The landlords stated that on June 3, 2015 the tenants were informed in person that this was a breach of the fixed term tenancy ending on July 31, 2015 and that the tenants were responsible for the rental premises until the end of the fixed term. The landlords stated that the tenants had retracted their notice to vacate and end the tenancy on June 30, 2015.

The landlords stated that on June 17, 2015 another email was received from the tenants which stated,

Also I have spoken to the Tenancy Act of British Columbia and since we gave you notice to end our tenancy at the end of June 2015 I will give you our forwarding address so that you can send our damage deposit to. You have 5 days for mail, and 10 days to respond for total of 15 days to return our damage deposit in full.

The landlords stated that after receiving this email, the landlords believed that the tenants were again seeking to end the tenancy early. The landlords stated that the tenants vacated the rental unit on July 3, 2015 and failed to pay the rent for the month of July 2015. The tenants disputed this claim stating that they vacated the rental premises on June 27th or 28^h of 2015.

The landlords stated that they immediately began to advertise the rental unit when it was discovered that the tenants would be vacating the rental unit, but were unsuccessful as it was not possible to re-rent the premises for only one month. The landlords indicated that they no longer wished to re-rent the unit beyond July 31, 2015 as the property had been sold and possession of the property was to take place on August 1, 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45 (2) of the *Act* speaks to how a tenant may end a tenancy and states,

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

It is clear based upon the undisputed affirmed testimony of both parties that the tenants provided their notice to vacate the rental unit on June 1, 2015 via email. Service in this manner was accepted by the landlord as the landlord provided undisputed testimony that a discussions with the tenants were made on June 3, 2015 in which the landlord cautioned the tenants that they were still responsible for the tenancy until the end of the fixed term on July 31, 2015. The landlord provided undisputed affirmed testimony that the tenants at that time were no longer seeking to end the tenancy. The landlord provided undisputed affirmed testimony that an email was received on June 17, 2015 from the tenants in which the landlords were informed that the tenants were still seeking to end the tenancy on June 30, 2015. The landlord provided undisputed affirmed testimony that all attempts to contact the tenants went unanswered by the tenants.

I find that the tenants failed to provide proper notice to end the tenancy to the landlord. Although notice was not made in writing to the landlord, but by email, I accept that even if I accept the tenants' initial notice to end the tenancy date of June 1, 2015, the tenants did not provide 1 months' notice to end the tenancy on June 30, 2015. Rent is due on the 31st day of each month. The tenants would have to give notice to end the tenancy no later than May 30, 2015. In any event the tenants' breached the fixed term tenancy by ending it prematurely on June 30, 2015, prior to July 31, 2015.

The landlords provided undisputed affirmed testimony that upon confirming that the tenants had vacated the rental unit they began to immediately advertised the rental premises for 1 Month. The landlords stated that all attempts to re-rent the rental premises for 1 Month were unsuccessful. The landlord provided undisputed affirmed testimony that the property had been sold for possession to the new owners on August 1, 2015.

Section 7 of the Act states,

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 upon the undisputed affirmed testimony it is clear that the tenants breached the tenancy agreement by prematurely ending the fixed term tenancy before July 31, 2015. Section 7 (1) states that the tenants must compensate the landlords for any loss that results. The tenants failed to pay rent of \$1,350.00 for July 2015 rent. Section 7 (2) states that the landlord in this case who is claiming compensation for loss through the breach of the tenants' breach of the fixed term tenancy must do whatever is reasonable to minimize the loss. In this case the tenants breached the fixed term first and then the landlords tried to mitigate any possible losses by advertising the premises for rent for 1 Month as the property had been sold. I find that it would be highly unlikely that the landlords would be able to re-rent the premises for 1 month, but that the landlords made reasonable efforts to mitigate the possible losses by advertising the unit for rent. The landlords are entitled to recovery of the unpaid rent of \$1,350.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,400.00.

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: March 23, 2016

Residential Tenancy Branch

