



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding Associa British Columbia Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for potential future lost revenue. Two agents for the landlord and both tenants participated in the teleconference hearing.

I informed the landlord that they could not apply for anticipated future loss. I did not hear evidence regarding this portion of the landlord's claim.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on August 1, 2015, with monthly rent of \$785.00 payable in advance on the first day of each month. The tenancy was set for a fixed term that would end on July 31, 2016. The parties initialled the section of the agreement that indicated at the end of the fixed term, the tenants would be required to vacate the unit and the tenancy would end.

On June 6, 2016 the landlord offered to enter into a new one-year lease for the rental unit, at a new rent of \$815.00. The landlord and the tenants did not enter into a new tenancy agreement. The tenants did not vacate the rental unit on July 31, 2016. On August 1, 2016 the tenants paid the landlord rent of \$815.00. On August 13, 2016 the landlord served the tenants with a receipt for August rent, on which the landlord wrote that they accepted the payment for use and occupancy only.

Landlord's Evidence

The landlord stated that they tried to contact the tenants in order to have them sign a new agreement for another fixed term, but they refused to sign. The landlord's position is that the tenancy ended on July 31, 2016, and the tenants are now overholding. The landlord stated that they never do month-to-month tenancy agreements.

Tenants' Response

The tenants submitted that their tenancy reverted to a month-to-month tenancy beginning on August 1, 2016, when they paid the rent in full. The tenants stated that the landlord contacted them on August 10, 2015 and August 12, 2016, saying they just needed to formalize things by signing the new lease. The tenants stated that the landlord said nothing about use and occupancy until they issued the rent receipt on August 13, 2016.

Analysis

I have reviewed all evidence and I find that the landlord is not entitled to an order of possession. The tenants presented credible evidence that the landlord did not accept the August 2016 rent for use and occupancy only. Nor did the landlord communicate or imply in any way that the tenancy had ended and the tenants were required to vacate.

I find that the tenancy reverted to a month-to-month tenancy beginning on August 1, 2016. The landlord did not serve the tenants with a valid notice of rent increase, and therefore the rent remains at ~~\$795.00~~ **\$785.00** per month until such time as the landlord serves a notice of rent increase in accordance with the Act. Section 43 of the Act allows a tenant to recover any overpayment of rent by deducting the overpayment from their next month's rent.

As the landlord's application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed in its entirety.

As noted above, the tenancy has reverted to a month-to-month tenancy with monthly rent of ~~\$795.00~~ **\$785.00**, and the tenants may deduct any overpayments of rent from their next month's rent.

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 7, 2016

Residential Tenancy Branch