



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On July 16, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, for loss of rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and one of the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties agreed that the Landlord’s evidence was received by the Tenant and that the Tenant did not submit any evidence for the hearing.

During the hearing, the Landlord confirmed that she was only seeking compensation for one month’s unpaid rent and not for damages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for the loss of one month’s rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The two-year, fixed term tenancy began on August 15, 2016 and was to end on August 15, 2018. The rent for the last year of the tenancy was \$2,060.00 and payable on the first of each month. The Landlord collected a \$1,000.00 security deposit and a \$1,000.00 pet damage deposit. During the move-out inspection the Tenants agreed for the Landlord to deduct \$250.00 from their security deposit for damages. The Landlord currently holds a security deposit and pet damage deposit in the amount of \$1,750.00.

The Landlord testified that a few months prior to the end of the tenancy date, August 15, 2018, she asked the Tenants if they were planning to renew the lease. She stated that the Tenants responded that they were likely going to move and asked if there was some flexibility in when the tenancy could end. The Landlord agreed that the August 15, 2018 date was awkward, and she would be open to ending it earlier if required by the Tenants. She stated that there was no date set for an alternative end of tenancy and nothing put in writing.

The Landlord submitted text messages that showed on May 28, 2018, that she asked the Tenants whether they are still targeting an August departure date. The Tenants responded saying they were unsure and it “depends on finding another place”.

The Landlord stated that on June 14, 2018, the Tenants texted her and stated that they will be moving out of the rental unit on July 1, 2018. The Landlord replied to ask if the Tenants meant August and the Tenants confirmed that it would be for July 1, 2018.

The Landlord testified that she communicated with the Tenants that the Tenancy Agreement stated an end date of August 15, 2018 and that she would have worked with them if they wanted to move by August 1, 2018. The Landlord explained to the Tenants that their notice to end the tenancy was too short and that she was expecting the Tenants to pay the July rent.

The Landlord stated that she started showing the rental unit in June 2018 and, in July, established a new tenancy to start on August 1, 2018. The Landlord said that the Tenants failed to pay the July 2018 rent and is claiming a loss of rent in the amount of \$2,060.00.

The Tenant agreed that discussions about moving out early started in mid-May 2018 between the Tenants and the Landlord. The Landlord asked about a pre-move out inspection at the end of May and first showed the rental unit on June 6, 2018.

The Tenant testified that they located a new home and texted the Landlord on June 14, 2018 to advise that they would be moving out on July 1, 2018. The Tenant stated that it was her understanding that a “short move-out notice” would be okay with the Landlord. The Tenant acknowledged that there was no verbal or written agreement with the Landlord to alter the move-out date that was agreed to in the Tenancy Agreement.

The Tenant stated that they should not have to pay the July 2018 rent as the Landlord had agreed to the Tenants moving out early if they needed.

Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Section 44(1) of the Act refers to how a tenancy can end and specifically states that a tenancy can end when the Landlord and the Tenant agree in writing to end the tenancy.

Section 45(2) of the Act states that a Tenant may end a fixed term tenancy by giving the Landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice; is not earlier than the date specified in the Tenancy Agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement.

Based on the undisputed testimony of the Landlord, I find that the Tenants did not obtain a written agreement with the Landlord to alter the end date of the tenancy. I find that the Tenants failed to abide by Section 45(2) of the Act by providing only two weeks of notice that they were moving out of the rental unit. Furthermore, they breached the same section by attempting to end the tenancy earlier than the date specified in the Tenancy Agreement.

I find that the Tenants are responsible for the July 2018 rent and that the Landlord mitigated her losses by actively seeking new tenants and arranging a new tenancy for

August 1, 2018. The Landlord has established a monetary loss for one month's rent, in the amount of \$2,060.00.

The Landlord's Application has merit and I find that the Landlord should be compensated for the cost of the filing fee, in the amount of \$100.00.

The Landlord has established a monetary claim, in the amount of \$2,160.00, which includes \$2,060.00 for July 2018 rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit and pet damage deposit of \$1,750.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$410.00, in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$410.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: November 22, 2018

Residential Tenancy Branch