



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNR, FF (Landlord's Application)
MNSD, OLC, MNDC, FF (Tenant's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution filed on June 21, 2016 the Landlord sought a Monetary Order for unpaid rent, recovery of the filing fee and authority to retain the Tenant's security deposit. In the Tenant's application for Dispute Resolution filed on August 28, 2016 the Tenant claimed a Monetary Order for return of double her security deposit, return of funds paid for parking and recovery of the filing fee.

This matter was set for hearing by telephone conference call at 1:30 p.m. on December 15, 2016. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord.

Rule 7.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Rule 7.3 provides as follows:

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend the hearing and the Landlord appeared and was ready to proceed, I dismiss the Tenant's claim filed August 29, 2016 without leave to reapply.

The Landlord testified that she served her application materials on the Tenant by registered mail. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline, “12. Service Provisions” provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served and I proceeded with the hearing of the Landlord’s claim in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord’s submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord be authorized to retain the Tenant’s security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this one year fixed term tenancy began August 3, 2015 and was set to end on September 1, 2016. A copy of the residential tenancy agreement was provided in evidence. Monthly rent was \$1,590.00.

The Landlord testified that the property sold during the fixed term with a closing date was September 1, 2016. Accordingly, the Landlord issued a 2 Month Notice to End Tenancy for Landlord’s Use of Property with an effective date of August 31, 2016 (the “Notice”). Pursuant to section 53 of the *Residential Tenancy Act* the effective date automatically corrects to September 1, 2016 (the date indicated in the tenancy agreement as the end of the fixed term).

The Landlord testified that the Tenant moved out of the rental unit on June 30, 2016 and gave the Landlord the keys to the rental unit on July 1, 2016. The Landlord’s agent stated that the Tenant gave the Landlord 10 day’s Notice to end the tenancy, presumably pursuant to section 50.

The Landlord testified that the Tenant failed to pay rent for June, July or August. She confirmed that she intended to give the Tenant one month's free rent pursuant to the 2 Month Notice, namely August 2016.

In the within hearing the Landlord sought the sum of \$3,180.00 representing the two months' rent owing after the Tenant received her free month rent pursuant to section 51.

The Landlord also sought recovery of the filing fee and authority to retain the Tenants' security deposit in the amount of \$1,590.00. The Landlord testified that she returned the pet damage deposit \$250.00.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, and as I have dismissed the Tenant's claim, the Landlord has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I find, based on the undisputed testimony and evidence before and on a balance of probabilities as follows.

I find that the parties entered into a fixed term tenancy which was to end on September 1, 2016. The Tenant, in moving from the rental unit prior to September 1, 2016 breached the term of the tenancy agreement. The Tenant is therefore liable for the rent owing for the balance of the term.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Residential Tenancy Act*, when the property sold and as such the Tenant is entitled to compensation equivalent to one month's rent pursuant to section 51 of the *Act*.

Although it appears the Tenant attempted to give notice pursuant to section 50, that section only applies in a *periodic* tenancy; here the parties had a fixed term tenancy agreement. As such, the tenancy was to end on September 1, 2016 pursuant to the tenancy agreement as well the corrected effective date of the 2 Month Notice.

I accept the Landlord's evidence that the Tenant failed to pay rent for June, July and August 2016. As the Tenant was entitled to one free month pursuant to section 51(1), the Tenant is responsible for paying for the other two months. Accordingly, I award the Landlord compensation in the amount of \$3,180.00 representing two months' unpaid rent.

I also award the Landlord recovery of the \$100.00 filing fee, pursuant to section 72, as she has been substantially successful in her application.

I authorize the Landlord pursuant to section 38 to retain the Tenant's \$1,590.00 security deposit and I grant the Landlord a Monetary Order for the balance due of **\$1,690.00**. This Monetary Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) if necessary.

Conclusion

The Tenant's Application is dismissed without leave to reapply as she failed to call into the hearing.

The Landlord is awarded compensation equivalent to two month's unpaid rent as well as recovery of the filing fee. She is entitled to retain the Tenant's security deposit towards these sums and is granted a Monetary Order in the amount of **\$1,690.00** for the balance due.

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: December 15, 2016

Residential Tenancy Branch