



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction and Preliminary Matter

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent, authority to retain the Tenant's security deposit and to recover the filing fee.

Only the Landlord's agent, K.K. called into at the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

K.K. confirmed that although he is named on the Application for Dispute Resolution, he is the Landlord's property manager and agent. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Landlord's application to remove K.K.'s name as Landlord.

K.K. testified he served the Tenant with the Notice of Hearing and the Landlord's Application on July 7, 2016 by registered mail. A copy of the tracking number for the registered mail package is included on the unpublished cover page of this my Decision. K.K. stated that the package was not retrieved by the Tenant.

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 *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of July 12, 2016 and I proceeded in his 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 respective 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 a Monetary Order for unpaid rent?
2. Should the Landlord be entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided as follows: this tenancy began June 1, 2016; monthly rent was payable in the amount of \$650.00; and, the Tenant paid a \$325.00 security deposit.

K.K. stated that the Tenant did not give written notice to end the tenancy although he gave verbal notice to end the tenancy in mid-June, 2016 and moved out of the rental shortly before the end of June 2016. K.K. further stated that he informed the Tenant that as the Landlord was not provided proper notice to end the tenancy that the Tenant may be liable for the July 2016 rent and that in response the Tenant would not sign the move out condition inspection report.

K.K. stated that the rental unit was re-rented as of August 2016; as such, the Landlord requested monetary compensation for loss of rent for July 2016. The Landlord also requested recovery of the filing fee and authority to retain the Tenant's security deposit towards the amounts awarded.

Analysis

After consideration of the undisputed testimony of the Landlord and on a balance of probabilities I find as follows.

I find that the parties entered into a tenancy agreement which required the Tenant to pay monthly rent of \$650.00. The tenancy began on June 1, 2016.

I accept the Landlord's evidence that the Tenant gave verbal notice to end the tenancy shortly after moving in and that the Tenant moved from the rental unit before the end of June 2016.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and
 - (b) 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.
- (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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Tenant's verbal notice, given in mid June 2016, failed to comply with the above as it was not in writing and did not provide the required 30 days. Accordingly, I find that the Tenant is responsible for compensating the Landlord for the loss of rent for July 2016. I accept the Landlord's evidence that they attempted to mitigate their losses, but were not able to re-rent the rental unit until August 2016. The Landlord is entitled to the **\$650.00** claimed for July 2016.

As the Landlord has been successful, I also grant him recovery of the **\$100.00** filing fee pursuant to section 72 of the *Residential Tenancy Act*.

Pursuant to sections 38(4)(b) and 72(2)(b), I find that the Landlord is entitled to retain the Tenant's \$325.00 security deposit towards the \$750.00 awarded, and I grant the Landlord a Monetary Order for the balance due in the amount of **\$425.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord is entitled to \$650.00 for unpaid rent for July 2016, the \$100.00 filing fee for a total of \$750.00. The Landlord is authorized to retain the Tenant's security deposit of \$325.00 and is granted a Monetary Order for the balance due in the amount of **\$425.00**.

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 06, 2017

Residential Tenancy Branch