



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REZVAN HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 12, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by G.R. and A.M. The Tenants both attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, G.R. testified the Application package and documentary evidence were served of the Tenants by registered mail. The Tenants acknowledged receipt.

The Tenants testified that documentary evidence upon which they intended to rely was served on the Landlord's lawyer. Although not uploaded to the Service Portal, G.R. acknowledged receipt on behalf of the Landlord. Accordingly, the Tenants were given an opportunity to submit the documentary evidence to the Service Portal before the close of business on the day of the hearing. The Tenants' evidence was received.

No further issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find that these documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the fixed-term tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on September 1, 2018, and was expected to continue to August 31, 2019. During the tenancy, rent in the amount of \$2,100.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,050.00, which the Landlord holds.

On behalf of the Landlord, G.R. confirmed the Landlord is claiming unpaid rent which was due on September 1, 2018. He testified the Tenants stopped payment for the first month's rent and notified the Landlord of their intention to vacate the rental unit due to the smell of smoke. The Tenants vacated the rental unit on September 4, 2018. The Landlord took steps to re-rent the unit and was able to do so effective October 1, 2018.

In reply, the Tenants did not dispute that they stopped payment on the September 1, 2018, rent payment. Further, they acknowledged they moved their belongings out of the rental unit due to the smell of smoke on September 3, 2018. The Tenants testified that the windows were open they viewed the rental unit, and that they discussed the importance of a smoke-free environment with the property manager. They note that the addendum to the tenancy agreement states that smoking is not permitted on the rental property.

However, the Tenants noticed what was described as a strong smell of smoke when they moved in, and observed a neighbour smoking pot on his balcony. The Tenants submitted several letters from individuals who helped them move into the rental unit, who advised that they noticed the smell of smoke in the rental unit.

The Tenants also submitted they would have had to vacate the rental unit in any event because it would have had to be vacant to thoroughly clean it and remove any remaining smoke smell. A.M. disagreed and stated the new tenants in the unit have not complained of any smoke smell.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

In addition, section 45(2) of the *Act* states:

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.*

[Reproduced as written.]

That is, a tenant is not entitled to give notice to end a fixed-term tenancy before the date specified in the tenancy agreement as the end of the tenancy. In this case, the agreed date of the end of tenancy was August 31, 2019. However, the Tenants maintain there was a strong odour of smoke in the rental unit, which was not detected when they viewed the rental unit. They suggested the odour was sufficient to justify withholding rent and vacating before the end of the fixed term. I disagree. The Tenants had entered into a tenancy agreement with the Landlord, which was signed by the parties on August 5, 2018. Pursuant to section 16 of the *Act*, the rights and obligations of the parties – including the payment of rent – took effect on that date. The Tenants became obligated to pay rent to the Landlord by September 1, 2018. However, that payment was not made because of the stop payment requested by the Tenants.

I find the Tenants did not have a sufficient basis for withholding rent or ending the fixed term tenancy. The Tenants had an opportunity to view the property and make any investigations they believed necessary to ensure a smoke free environment. After viewing the rental unit, they elected to enter into a tenancy agreement with the Landlord and became obligated to pay the first month's rent by September 1, 2018. The Tenants moved into the rental unit on September 1, 2018, and moved their belongings out on September 3, 2018. Although I accept that the Tenants' concerns were expressed to the Landlord once detected, I find they did not give the Landlord sufficient opportunity to address them. The option available to the Tenants, if the Landlord did not adequately address the odour, was to make an application for dispute resolution to request an order that the Landlord do so.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,150.00, which has been calculated as follows:

Claim	Amount
Unpaid rent (September 2018):	\$2,100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,050.00)
TOTAL:	\$1,150.00

Conclusion

The Landlord is granted a monetary order in the amount of \$1,150.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 21, 2019

Residential Tenancy Branch