



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenants with her notice of application for dispute resolution and her first amendment package via registered mail on October 1, 2018. The tenants confirmed receipt of the above packages on October 3, 2018. I find that the tenants were deemed served with these packages on October 3, 2018, in accordance with section 89 of the *Act*.

The landlord testified that she served the tenants with her second amendment package on November 9, 2018 via registered mail. The tenants confirmed receipt but could not recall on what date. I find that the tenants were deemed served with the second amendment package on November 14, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

At the beginning of the hearing tenant R.W. testified that the shortened version of his first name was stated on the landlord's application for dispute resolution. Pursuant to

section 64 of the *Act*, I amend the landlord's application to state the tenant R.W.'s full first name.

Preliminary Evidence- Service of Tenants' Evidence

The tenants testified that they did not serve their evidence package on the landlord.

Section 3.15 of the *Residential Tenancy Branch Rules of Procedure* states that the Respondents' evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Since the landlord did not receive the tenants' evidence package, I find that the tenants' evidence is inadmissible.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2018 and ended on October 1, 2018. Monthly rent in the amount of \$1,300.00 was due by the

first day of each month; however, the landlord usually received the monthly rent on the 22nd day of each month, for the following month's rent. A security deposit of \$650.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on September 19, 2018 the tenants informed her via text message that they found another place. The landlord entered into evidence a series of text messages between the landlord and the tenants which stated that the tenants found another place and would like to recover their security deposit from the landlord. The landlord texted back and told the tenants that the damage deposit would not be returned until the end of the tenancy and asked the tenants on what date they were moving out. The landlord further stated that she would require one month's notice from the tenants. The tenants did not answer the landlord's question as to when they would move out of the subject rental property. The landlord texted the tenant again on September 19, 2018 and requested that they provide her with written notice of their intention to vacate.

The landlord testified that on September 20, 2018 she put a letter in the tenants' mailbox which informed the tenants that one month's written notice was required to end the tenancy and that text communications were not an acceptable method of providing notice to end the tenancy. The letter dated September 20, 2018 was entered into evidence. The tenants denied receiving it.

The landlord submitted that on September 25, 2018 that the tenants dropped off a letter at her place of work that was dated September 19, 2018, giving notice to end the tenancy on a date in October 2018; however, the date written in the letter was illegible. The letter dated September 19, 2018 was entered into evidence. The date stated as the end date of the tenancy is illegible.

The tenants testified that they provided notice to end tenancy to the landlord at her place of business on September 1, 2019. The September 1, 2019 letter was not accepted into evidence. The landlord denies receiving notice to end tenancy from the tenants prior to September 19, 2018.

The tenants testified that they did not write the letter dated September 19, 2018 that the landlord entered into evidence.

The landlord testified that the tenants did not provide one month's notice to end the tenancy and is seeking to recover October 2018's rent in the amount of \$1,300.00. The

landlord testified that a new tenant was found for November 1, 2018 and entered the new tenancy agreement into evidence.

The tenants testified that they texted their forwarding address to the landlord sometime between September 19-21, 2018. The landlord testified that she received the tenants' forwarding address via text sometime between September 20-22, 2018. Neither party entered the aforementioned text messages into evidence.

The landlord applied for dispute resolution on September 28, 2018.

Analysis

Given the conflicting testimony, this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the landlord's testimony as to the events leading to the end of this tenancy are in harmony with the undisputed text messages and other documents entered into evidence. It is the testimony of the tenants which are not in harmony with the evidence. I therefore accept the landlord's version of facts over that of the tenants'.

I find that the tenants' provided written notice of their intention to vacate the subject rental property on September 25, 2018, less than one month before they intended on moving out, contrary to section 45 of the *Act*.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month

after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Residential Tenancy Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

I find that the landlord made reasonable efforts to find a new tenant to move in on the date following the date that the notice took legal effect, that being November 1, 2018 because new tenants were found for that date. The tenants are therefore liable for October 2018's rent in the amount of \$1,300.00.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

While texting does not meet the service requirements under section 88 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act* with the tenants' forwarding address in writing between September 18-22, 2018, pursuant to section 71 of the *Act*.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

I find that since the landlord was successful in her application, she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$650.00 in part satisfaction of her monetary claim against the tenants.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October 2018 rent	\$1,300.00
Filing fee	\$100.00
Less security deposit	-\$650.00
TOTAL	\$750.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 28, 2019

Residential Tenancy Branch