



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OLC FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed January 10, 2019 under *the Residential Tenancy Act* (the Act) for the landlord to comply with the Act and recovery of the filing fee for this application. The tenant does not articulate in their application as to what portion of the Act they seek the landlord's compliance. None the less I accept that the tenant's application is sufficiently clear they also seek monetary compensation for the full amount of their paid first month's rent and return of their security deposit; therefore, the hearing proceeded on those claims.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties were also provided with opportunity to mutually resolve and settle this dispute to no avail. The parties each acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged presented all of the relevant evidence that they wished to present.

### *Preliminary matters – Style of cause*

The *style of cause* (action of this matter) has been amended to reflect the accurate name of the landlord and the accurate address of the rental unit.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed for the return of all rent paid and the return of their security deposit?

### **Background and Evidence**

The undisputed *relevant* evidence in this matter is as follows. The parties entered into a

tenancy agreement November 24, 2018 for a tenancy start of January 01, 2019 for a *fixed term* ending in December 31, 2019. I have benefit of a copy of the agreement. Under the contractual agreement the monthly rent of \$1200.00 was payable in advance. At the outset of the tenancy, the landlord collected a security deposit of \$600.00 which the landlord retains in trust. After the start of the tenancy the tenant and landlord exchanged concerns respecting the tenancy. The tenant was sufficiently upset with the landlord's position on certain matters and their disagreement with the landlord's version of concerns that they filed for dispute resolution. However, the tenant ultimately chose to move from the unit in mid-January 2019. The parties characterized the tenant's determination to vacate as acceptable to both. The landlord accepted the tenancy's end and offered to return the security deposit, however sought the tenant's fractional portion for utilities from January 01-15, 2019 as per the tenancy agreement. The tenant disagreed with the landlord's determination respecting return of monies and seeks all monies paid the landlord from the outset of the tenancy.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

On preponderance of the relevant evidence in this matter, I have reached a Decision upon the following findings.

**Section 16** of the Act states as follows,

#### **Start of rights and obligations under tenancy agreement**

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find the rights and obligations of the parties took effect on November 24, 2018.

I find that **Section 44** of the Act prescribes how a tenancy ends which, in part relevant to this matter, states as follows [**emphasis added**]

#### **How a tenancy ends**

- 44** (1) A tenancy ends **only** if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 45 [*tenant's notice*];
  - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;

I find the tenant ended the tenancy by their own volition without providing the landlord with the applicable prescribed Notice to End the tenancy in accordance with the above. I find I have not been presented with evidence the tenancy ended in accordance with any other provision prescribed by **Section 44** of the Act.

I find that **Section 26** of the Act states that rent must be paid when due in accordance with the tenancy agreement. Under the contract for this tenancy the landlord is owed the payable rent in advance for the applicable rental period. Without express agreement by the landlord a tenant is not automatically entitled to return of rent if they decide to vacate contrary to the Act or the contractual tenancy agreement as set out above. As a result, the tenant's claim for the rent paid for January 2019 is **dismissed** without leave to reapply.

In respect to the security deposit of the tenancy, the landlord has a right to withhold administering the deposit until they receive the tenant's forwarding address in writing. As a result I must further **dismiss** the tenant's claim for the security deposit, with leave

to reapply, if necessary. The parties were aptly apprised as to the obligations respecting security deposits.

As the tenant has not been successful in their application they are not entitled to recover their filing fee from the landlord.

**Conclusion**

The tenant's application has been dismissed in its entirety.

**This Decision is final and binding.**

*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: February 19, 2019

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Residential Tenancy Branch