



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 31, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit and/or pet damage deposit;
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by S.C., her daughter. The Tenant attended the hearing on her own behalf. Both S.C. and the Tenant provided affirmed testimony.

On behalf of the Landlord, S.C. testified the Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt. In addition, the Tenant testified that the documentary evidence upon which she intended to rely was served on the Landlord in person. S.C. acknowledged receipt on behalf of the Landlord. No 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 the above documents were sufficiently served for the purposes of the *Act*.

The parties were given the 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 or utilities?
2. Is the Landlord entitled to retain the security deposit and/or pet damage deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the month-to-month tenancy began on September 1, 2018. Rent in the amount of \$1,400.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$750.00, which the Landlord holds.

On behalf of the Landlord, S.C. testified the Landlord received the Tenant's written notice to end the tenancy on October 29, 2018. A copy was left attached to the door. S.C. stated rent was not paid on November 1 and December 1, 2018. S.C. requested a monetary order for unpaid rent to December 31, 2018, as the Landlord was unable to re-rent the unit until January 15, 2019.

The Tenant stated she is a quiet person who wanted her privacy to be respected. However, the Tenant testified she had to "flee" the tenancy because of the Landlord's failure to do so. Specifically, she described instances where her privacy was invaded when strangers accessed part of her unit and acted in an intimidating manner. For example, the Tenant testified she understood the corridor space to be part of her rental unit but acknowledged an agreement to allow the Landlord occasional access so she could utilize a storage area. She stated she never would have rented the unit if the corridor space was to be shared. However, in one instance, she found a strange and large man in the corridor between her rental unit and the bathroom. In written submissions, the Tenant indicated that she screamed in shock; she was "triggered".

In response, S.C. testified that the corridor space is a "common area" as the Landlord needs it to access her freezer, food, and the electrical panel for the property. She testified the Tenant was well aware this space would be shared. S.C. also testified it was the Landlord's son who accessed the corridor space with the Landlord during the incident described by the Tenant. S.C. testified that the Tenant reacted strongly and refused to open the door when the Landlord and her son tried to explain why they were present.

The Tenant also described other instances when other individuals acted in an aggressive and intimidating way towards the Tenant. According to the Tenant, S.C. threatened to break down a door if the Tenant did not unlock the door allowing the Landlord to access the corridor space. The Tenant testified that a police officer was present when this happened.

With respect to other instances, the Tenant did not name the individuals or describe what happened. On behalf of the Landlord, S.C. acknowledged that family members attend the property daily to check in on the Landlord.

Analysis

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

Section 45 of the *Act* confirms 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 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.

Further, section 26 of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, pursuant to section 45 of the *Act*, I find that the Tenant's notice was effective to end the month-to-month tenancy on November 30, 2018. Accordingly, I find the Landlord is not entitled to claim unpaid rent beyond that date.

Further, I find there is insufficient evidence before me to conclude the Tenant was justified in ending the tenancy early, or had a right under the *Act* to deduct all or a portion of the rent. Rather, if the Tenant's privacy was being violated by repeated entries to the corridor area, or by the actions of the Landlord's family members, the Tenant was at liberty to make an application for dispute resolution seeking an appropriate order under the *Act*.

It was not disputed that the Tenant did not pay rent when due on November 1, 2018. In light of my findings above, I conclude the Landlord has demonstrated an entitlement to recover unpaid rent in the amount of \$1,400.00, which was due on November 1, 2018.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. In addition, I find it is appropriate in the circumstances to permit the Landlord to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$750.00, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent:	\$1,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$750.00)
TOTAL:	\$750.00

Conclusion

The Landlord is granted a monetary order in the amount of \$750.00. The monetary 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: February 25, 2019

Residential Tenancy Branch