



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On November 22, 2018 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord and the Landlord's representative attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that she served her Application and documentary evidence package to the Tenant by registered mail on November 23, 2018. The Tenant confirmed receipt. The Tenant testified that he served the Landlord with his documentary evidence by email on March 4, 2019. The Landlord confirmed receipt. 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 an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on February 1, 2017 and was meant to end on January 31, 2018. The tenancy continued into a periodic month to month tenancy thereafter. During the tenancy, rent in the amount of \$1,130.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 which the Landlord continues to hold. The tenancy ended on November 6, 2018. The Landlord submitted a copy of the tenancy agreement in support.

The Landlord testified that she received a notice to end tenancy from the Tenant on October 24, 2018 indicating that he would like to move out as early as October 31, 2018. The Landlord testified that she advertised the rental unit on October 25, 2018 and secured a new tenant on October 29, 2018 who agreed to move into the rental unit on November 15, 2018. The Landlord submitted a copy of the new tenancy agreement between the Landlord and the new tenant in support.

The Landlord testified that the Tenant did not provide the Landlord with a full month's notice to end tenancy. The Landlord stated that they had come to a mutual understanding that the Landlord would not charge the Tenant rent for November 2018 in exchange for the Landlord retaining the Tenant's security deposit in the amount of \$550.00.

The Tenant indicated that he received a text message from the Landlord on November 4, 2018 indicating that the Landlord required the keys from the Tenant on November 6, 2018 to provide the keys to the new tenant. The Tenant understood this to mean that the new tenant would be moving into the rental unit on November 6, 2018, therefore doesn't feel as though he should have to pay rent beyond that date.

The Landlord testified that no one moved into the rental unit until November 15, 2018 and is therefore seeking to retain the Tenant's security deposit in the amount of \$550.00 to compensate the Landlord for lost rent from November 1 to 14, 2018.

Analysis

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 (1) of the *Act*, 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.

In this case, the parties agreed that the Tenant provided the Landlord with his notice to end tenancy on October 24, 2018 before the tenancy ended on November 6, 2018. I find that the Tenant ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*.

I accept that the Landlord advertised the suite on October 25, 2018 and found a new tenant on October 29, 2018 who signed a tenancy agreement with the Landlord. The Landlord testified and provided documentary evidence confirming that the new tenancy began on November 15, 2018. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord re-rented the rental unit sooner than November 15, 2018.

In light of the above, I find that the Landlord has established an entitlement to compensation for loss of rent on a per diem basis from November 1 to 14, 2018 in the amount of \$527.33.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$627.33, which has been calculated as follows:

Claim	Amount
Unpaid Rent	\$527.33
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$550.00)
TOTAL:	\$77.33

Conclusion

The Landlord is granted a monetary order in the amount of \$77.33. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: March 25, 2019

Residential Tenancy Branch