



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover his filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The parties orally agreed to enter a fixed tenancy agreement on January 27, 2019. The landlord sent a copy of the tenancy agreement with an addendum on by email January 27, 2019. The tenancy agreement stated that it was for a fixed term tenancy for one year commencing on February 1, 2019. The rent was \$1,600.00 per month with a \$800.00 security deposit.

The tenant agreement had a provision in the addendum which stated:

1. ...The Tenant agrees that the occupant(s) as listed on the Residential Tenancy Agreement shall be the only resident occupant(s) of this suite (staying overnight more than two nights in any months) unless the Landlord agrees otherwise in writing.

The tenant stated that read the tenancy and agreement and the addendum and she agreed with the terms. She testified that did want her parents to stay with her in the rental unit for 10 days to two weeks but she did not think that this would be an issue. The tenant paid the \$800.00 security deposit by etransfer and the parties agreed to meet the following day at the rental unit to sign the tenancy agreement.

When the parties met on January 28, 2019, the tenant advised the landlord that she wanted her parents to stay with her in the rental unit for 10 days to two weeks in the rental unit. The landlord refused to let the tenant do so. The tenant did not sign the tenancy agreement and she told the landlord that was cancelling the tenancy.

The landlord refunded \$615.00 to the tenant by etransfer on January 28, 2019. The landlord retained the sum of \$185.00 from the security deposit which the landlord still retains.

The landlord testified that he attempted to find another tenant for the rental unit. The landlord was able to secure another tenant with a tenancy starting on February 15, 2019. The landlord claims that he lost one-half of the month's rent in February 2019, being \$800.00.

The tenant claims that the tenancy agreement provision was restricting guests was contrary to BC law.

Analysis

First, I turn to the issue of whether or not there was a valid and enforceable tenancy agreement. The *Act* defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 16 of the *Act* states that:

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.

In order establish a contractual relationship, there must be capacity, a meeting of the minds (a consensus), and consideration.

As neither party raised any issues regarding a lack of capacity, I find that the parties had valid capacity to enter a tenancy agreement.

I also find that there was a meeting of the minds between the parties regarding an agreement. I find that the landlord sent the tenant an offer to rent the rental unit by sending the tenant the tenancy agreement with the addendum by email. The tenant testified that she read and agreed with the terms in the tenancy agreement. I find that the tenant accepted the terms of the agreement by sending the \$800.00 deposit.

I find that the \$800.00 etransfer also constituted consideration for the agreement.

Accordingly, I find that the parties had an oral fixed term tenancy agreement when the tenant sent the security deposit. And, pursuant to section 16 of the *Act*, the tenant's obligations under the tenancy agreement started when the contract was entered into regardless of whether she moved into the rental unit.

Further, I find that the tenant breached the tenancy agreement by cancelling the tenancy agreement on February 28, 2019. The tenant argued that the contractual term which prohibited guests violated BC law. While this provision of the tenancy agreement may be unenforceable, the tenant should have objected to the provision before she agreed to enter the contract. Alternatively, the tenant could have entered the tenancy agreement and then filed an application for dispute resolution to have the provision cancelled. However, the tenant was not entitled to breach the tenancy agreement by unilaterally cancelling the agreement.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based on the landlord's testimony, I am satisfied that the landlord has sustained a loss of rent from the tenant's early termination of the tenancy agreement. I find that tenant breached the tenancy agreement by cancelling the tenancy on January 28, 2019. I find that the landlord was not able to find a new tenant until February 15, 2019, thereby losing one-half of the rent in February 2019, being \$800.00 I find that the landlord is entitled to a monetary order for \$800.00 for compensation for his lost rent.

Based on testimony of the parties, I find that the landlord holds a security deposit of \$185.00 which may be deducted from the damages owed by the tenant pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlord is entitled to a monetary order of \$715.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
Loss of rent for February 2019	\$800.00
Less security deposit	(\$185.00)
Filing fee	\$100.00
Total	\$715.00

Conclusion

I grant the landlord a monetary order in the amount of **\$715.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: May 28, 2019

Residential Tenancy Branch