



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 6, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by R.S., an agent. The Tenants attended the hearing. Both R.S. and the Tenants provided affirmed testimony.

The Landlord testified that the Application package was served on the Tenants by registered mail. The Tenants acknowledged receipt. Further, the Tenants testified the documentary evidence upon which they intended to rely was served on the Landlord by registered mail. R.S. acknowledged receipt on behalf of the Landlord. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were represented or in attendance, and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. 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?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on June 1, 2018, and was expected to continue to May 31, 2019. However, the parties agreed the tenancy ended on November 1, 2018, at which time the Tenants vacated the rental unit. Rent in the amount of \$1,700.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$787.50 and a pet damage deposit of \$250.00, which the Landlord holds.

The Landlord's claims were set out in the Application. First, the Landlord claims \$1,700.00 for unpaid rent due on November 1, 2018. On behalf of the Landlord, R.S. testified the Tenants gave improper notice to end the fixed-term tenancy on September 30, 2018. R.S. testified the Landlord took steps to re-rent the unit and a new agreement was effective December 29, 2018.

Second, the Landlord claims \$20.00 for an NSF fee incurred due to the missed rent payment on November 1, 2018. Paragraph 4(b)(i) of the tenancy agreement provides for a \$25.00 fee but R.S. acknowledged the Landlord's bank only charges \$20.00.

In reply, the Tenants did not dispute that notice to end the tenancy was given on September 30, 2018. The Tenants also confirmed that they moved out of the rental unit on November 1, 2018. The Tenants also confirmed that a stop payment request was made with respect to the rent payment for November 1, 2018. However, they suggested proper notice was given. The Tenants also provided several reasons they were justified in ending the fixed-term tenancy early, which included:

- Landlord's failure to provide parking as agreed;
- Repeated inspections of the rental unit;
- Garbage on the rental property;
- A vehicle parked outside the Tenants window; and
- Smoking outside the rental property.

In addition, the Tenants asserted they spoke to a representative of the Landlord who advised they could terminate the tenancy by paying \$200.00.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested that the Landlord be permitted to retain the security deposit in partial satisfaction of the claim.

Analysis

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

With respect to the Landlord's claim for \$1,700.00 for unpaid rent, section 26(1) of the *Act* states:

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

[Reproduced as written.]

Further, section 45 of the *Act* confirms that a tenant may not end a fixed-term tenancy before the date specified in the tenancy agreement as the end of the tenancy. To be effective, the written notice must be provided to the landlord no less than one month before the effective date of the notice, and must be provided the day before the day rent is due.

In this case, the parties confirmed the Tenants provided written notice to end the fixed-term tenancy on September 30, 2018, and vacated on November 1, 2018. The parties further confirmed the Tenants did not pay rent when due on November 1, 2018. R.S. testified, and I accept, that the Landlord was unable to re-rent the unit until December 29, 2018.

After careful consideration of the evidence and submissions of the parties, and pursuant to section 45 of the *Act*, I find the Tenants did not give notice to end the tenancy in accordance with the *Act*. The Landlord and Tenants were parties to a fixed-term tenancy agreement that was expected to continue to May 31, 2019.

Although the Tenants raised a number of concerns that arose during the tenancy, described above, I find these were not sufficient to provide a basis for ending the tenancy. For example, if the Tenants believed the Landlord breached terms of the tenancy agreement or the *Act*, they were at liberty to make an application for dispute resolution and request related orders. There was no evidence put before me that they did so. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$1,700.00.

With respect to the Landlord's claim for \$20.00 for an NSF fee, section 7 of the *Residential Tenancy Regulation* permits a landlord to charge a non-refundable administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. The tenancy agreement must provide for the fee. In this case, I find that the tenancy agreement provides for a \$25.00 fee. However, as confirmed by R.S., the Landlord incurred only a \$20.00 fee for the stopped payment. Therefore, I find the Landlord is entitled to a monetary award of \$20.00 for recovery of the NSF fee.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that the security and pet damage deposits held be applied to the Landlord's monetary award in partial satisfaction of the claim.

Therefore, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$782.50, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent:	\$1,700.00
NSF fee:	\$20.00
Filing fee:	\$100.00
LESS security deposit:	(\$787.50)
LESS pet damage deposit:	(\$250.00)
TOTAL:	\$782.50

Conclusion

The Landlord is granted a monetary order in the amount of \$782.50. The 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: May 17, 2019

Residential Tenancy Branch