



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 March 1, 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 and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package was served on the Tenants by registered mail on March 6, 2019. A Canada Post customer receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenants on March 11, 2019.

The Tenants submitted documentary evidence in response to the Application. The Tenants testified it was served on the Landlord by registered mail. However, due to issues arising from the sale of the rental unit, the Landlord did not receive the documents. However, the Landlord confirmed he was prepared to proceed without having received the Tenants' documentary evidence.

During the hearing, no further issues were raised with respect to the evidence relied upon. The parties were in attendance and were prepared to proceed. 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 May 1, 2018, and was expected to continue to April 30, 2019. During the tenancy, rent in the amount of \$2,150.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,075.00, which the Landlord holds.

The Landlord testified that he informed the Tenants of his intention to sell the rental unit on February 7, 2019. He testified the Tenants acted quickly and vacated the rental property on February 28, 2019, before the end of the fixed term. The Landlord testified Tenants did not pay rent when due on March 1 and April 1, 2019.

The Landlord testified that he advertised the rental unit on Kijiji and Craigslist for a short term of 2-3 months, but was not successful in re-renting the unit. The rental unit was sold at the end of April 2019.

The Landlord testified he did not ask the Tenants to vacate the rental unit.

In reply, the Tenants did not dispute that they vacated the rental unit on February 28, 2019, or that rent was not paid as claimed by the Landlord. However, they testified that the Landlord told them the rental property would be sold. Although the Tenants testified that they would have preferred to stay on a month-to-month basis after the end of the fixed term, they stated they felt “uncomfortable” and started looking for alternative accommodation. During the hearing, the Tenants acknowledged that they were unaware the Landlord could not evict them based on his intention to sell the rental unit.

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:

The Landlord’s claim is for unpaid rent. Section 26(1) of the *Act* confirms:

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.]

In this case, it was not disputed that the Tenants vacated the rental property on February 28, 2019, before the end of the fixed term. Further, it was not disputed that the Tenants did not pay rent when due on March 1 and April 1, 2019.

The Tenants’ dispute of the Landlord’s claim hinges on their belief that they were required to vacate the rental unit because it was to be listed for sale. However, I find the Tenants breached the fixed-term tenancy agreement as there was no obligation to vacate the rental unit based on the Landlord’s advice that he intended to sell it.

I find the Tenants' breach resulted in a loss of rental income for the Landlord. However, section 7 of the *Act* confirms that a party who makes a claim for damage or loss "must do whatever is reasonable to minimize the damage or loss." In this case, the onus is on the Landlord to demonstrate that he took reasonable steps to minimize his losses, perhaps by re-renting the unit. I find the Landlord's attempt to re-rent the unit for only a 2-3 month period was not reasonable and may have dissuaded potential tenants, contributing to the Landlord's losses.

Based on the foregoing, I find it is reasonable to grant the Landlord a monetary award for 1 month of unpaid rent in the amount of \$2,150.00.

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 deposit 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 \$1,175.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,150.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,075.00)
TOTAL:	(\$1,175.00)

Conclusion

The Landlord is granted a monetary order in the amount of \$1,175.00. 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: June 20, 2019

Residential Tenancy Branch