



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 24, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Application package was served on the Tenant by registered mail on April 24, 2019. A Canada Post registered mail receipt was submitted in support. The Tenant testified she received only the Notice of Dispute Resolution Proceeding but did not receive the Landlord's documentary evidence. Nevertheless, the Tenant agreed I could consider the tenancy agreement between the parties and the Tenant's written notice, both of which were signed by the Tenant. The Tenant agreed to proceed on this basis. Pursuant to section 71 of the *Act*, I find the Notice of Dispute Resolution Proceeding and documentary evidence relied upon were sufficiently served for the purposes of the *Act*.

The Tenant testified she was unable to submit documentary evidence in response to the Application. However, I find this is unlikely as she received the Notice of Dispute Resolution Proceeding, which set out the Landlord's claim and provided instructions for providing evidence to support her position. In any event, as noted above, the Tenant agreed to proceed based on my reliance on the documents referred to.

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 money owed or compensation for damage or loss?
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 signed tenancy agreement between the parties was submitted into evidence. Although the agreement indicated the tenancy was to begin on April 11, 2019, the parties confirmed during the hearing that the fixed-term tenancy began on May 1, 2019, and was expected to continue to May 31, 2020. Rent in the amount of \$1,300.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$650.00, which the Landlord holds.

The Landlord claims \$650.00 for lost rent caused by the Tenant's breach of the fixed term tenancy agreement. The parties agreed the Tenant never moved into the rental unit. Rather, in a letter dated April 16, 2019, the Tenant provided notice of her intention to end the tenancy. The Tenant advised that "due to unforeseen circumstances I can no longer rent from you." The Tenant also requested the return of a security deposit and provided a forwarding address. The Landlord confirmed receipt of the letter.

The Landlord testified that upon receiving the Tenant's written notice, he took steps to re-rent the unit. However, he stated he was unable to re-rent the unit until May 15, 2019, resulting in the loss of a half month's rent. The Landlord testified that the new tenancy agreement was signed on May 9, 2019.

In reply, the Tenant testified the tenancy agreement should have been signed by her partner, suggesting it was invalid because her partner did not sign it. In addition, the Tenant testified to her belief the new tenancy agreement was actually signed on April 29, 2019, before she was due to move into the rental unit, suggesting this impacted her obligation to the Landlord.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and sought order permitting the Landlord to retain the security deposit held in satisfaction of the claim.

Analysis

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

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*. 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.

In this case, I find, pursuant to section 16 of the *Act*, that the parties' rights and obligations under the tenancy agreement took effect on April 11, 2019, at which time they signed the fixed-term tenancy agreement. Further, I accept the parties' testimony confirming the Tenant was to take possession of the rental unit on May 1, 2019, but did not. Therefore, I find the Tenant breached the fixed-term tenancy agreement by giving the Landlord written notice of her intention to end the tenancy in the letter dated April 16, 2019. The Landlord testified, and I find, that he did his best to find a new tenant but that the new tenancy did not begin until May 15, 2019, resulting in the loss of half a month's rent, or \$650.00. I reject the Tenant's assertion that her obligation to the Landlord was impacted because her partner did not sign the tenancy agreement. Further, I reject the Tenant's assertion that the new tenancy agreement was signed on April 29, 2019, or that it would have made a difference with respect to her obligations under the fixed-term tenancy agreement. Rather, I find the Landlord quickly secured a new tenant, thereby minimizing his potential loss and the Tenant's obligation.

I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$650.00. Finally, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00, which has been calculated as follows:

Claim	Amount
Lost rent:	\$650.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$650.00)
TOTAL:	\$100.00

Conclusion

The Landlord is granted a monetary order in the amount of \$100.00. 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: August 6, 2019

Residential Tenancy Branch