



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 27, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for monetary loss or other money owed;
- 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 attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlord's son, Z.W., also attended the hearing to provide translation services. The Tenants did not attend the hearing.

The Landlord confirmed that the Application package was served on the Tenants by email on June 21, 2019, pursuant to an order for substituted service issued on June 21, 2019. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The Landlord was 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 compensation for monetary loss or other money owed
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
4. 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 October 1, 2018, and was expected to continue to October 1, 2019. During the tenancy, rent in the amount of \$4,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$2,500.00, which the Landlord holds.

The Landlord testified the Tenants ended the tenancy before the end of the fixed term. The Tenants provided the Landlord with written notice to end the tenancy in an email dated April 13, 2019. In it, the Tenants advised that their tourist visas were not being extended and that they were required to leave Canada by May 1, 2019. A copy of the email was submitted into evidence. The Landlord testified the Tenants vacated the rental unit on April 30, 2019, and provided a further email from the Tenants, dated May 1, 2019, in support. However, rent was not paid when due on May 1, 2019.

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.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

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

Section 45(2) describes how a tenant may end a fixed-term tenancy. It states:

A tenant may end a fixed term 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,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) 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.*

[Reproduced as written.]

Further, 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.]

Reading these provisions together, I find the Tenants were not entitled to end the fixed term tenancy effective May 1, 2019. This date was earlier than the date specified in the tenancy agreement as the end of the tenancy. Therefore, I find that rent remained payable when due on May 1, 2019. However, the Tenants did not pay rent when due on May 1, 2019. Therefore, I find the Landlord is entitled to recover \$4,000.00 in unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the security deposit held be applied to the Landlord's monetary award 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 \$1,600.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$2,500.00)
TOTAL:	\$1,600.00

Conclusion

I find the Landlord is entitled to a monetary order in the amount of \$1,600.00. 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 12, 2019

Residential Tenancy Branch