



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- 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;
- a monetary order for unpaid rent in the amount of \$868.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on June 3, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenant confirmed receipt of the notice of dispute resolution form but denied that it was accompanied by an evidence package.

The tenant testified that he himself receive and open the package, but rather an agent of his did. He testified his agent provided him digital copies of all documents in the registered mail package. The landlord persisted in her testimony that the registered mail package contained her documentary evidence.

I accept the landlords' testimony. I find that it more likely than not that the tenant's agent neglected to provide sent copies of the landlord's evidence to the tenant, than the landlord not serving the evidence documents in the first place.

In any event, the documentary evidence relied on at this hearing by the landlord consisted of three short text message chains between herself and two other tenants. During the hearing I read the entirety of these chains to the tenant and provided him an opportunity to ask any questions about the email chains.

I find that the landlord served the tenant with the notice of dispute resolution and evidence package in accordance with the Act.

The tenant testified, and the landlord confirmed, that he served the landlord with copies of his documentary evidence. I find that he did so in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order of \$868.00 for unpaid rent; and
- 2) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties, along with two other non-party tenants, entered into a written fixed-term tenancy agreement starting September 2, 2019 and ending May 31, 2019. Monthly rent was \$1,370.00 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$700.00. The landlord still retains this deposit.

The tenancy agreement listed the end date as May 31, 2018. At the hearing the tenant stated that, upon entering into the agreement, he understood that the tenancy was not to end in 2018, but rather in 2019.

The landlord testified that the tenants vacated the rental unit in advance of May 31, 2019, and only paid a portion of May's rent. She is claiming the balance of the rent.

The tenant does not deny the tenants vacated the rental property before May 31, 2019. He entered into evidence a letter dated April 11, 2019, wherein he provided (oh behalf

of all three tenants) thirty days' notice to end the tenancy. He stated that the parties would pay rent for the next thirty days (that is until May 11, 2019) in the amount of \$486.13.

The landlord testified that the tenants paid \$487.00 on May 1, 2019.

The landlord asserts that the tenant is a party to a fixed term contract, and he and the other tenants are accordingly required to pay rent for the full term of the tenancy agreement, that is, until May 31, 2019.

The tenant argues that the tenancy agreement has several defects which serve to render it void, and that due to this, the tenancy was in fact a month to month tenancy. As such, he argues, he has complied with the Act by giving thirty days' written notice to end the tenancy. At the hearing, the tenant conceded that if I determined the tenancy agreement to be valid, that he and the tenants would be required to pay rent for the full term (that is, the balance of the May rent, for which the landlord has applied).

The tenant included in his evidence package a list of deficiencies with the tenancy agreement he says cause it to be void. They are as follows:

Issues with Tenancy Agreement

- 1) Agreement states tenant term ended on May 31, 2018
 - a. Makes the Agreement void
 - b. Agreement was not provided to all tenants, therefore this was not noticed earlier
- 2) Does not supply landlord address
 - a. Cannot deliver documents to landlord's address
- 3) Did not complete 2(D) or 2(E)
 - a. Required if 2(C) is completed
 - b. Therefore assuming a tenancy on a month to month basis
- 4) Security deposit is more than ½ of first month's rent
 - a. \$700 for monthly rent of \$1370
- 5) Written "conditions" on top of page 6
 - a. "No partying, growing marijuana and drugs on premises. Snow removal of parking spot/half side of driveway. No holes in walls."
- 6) Addendum is handwritten and not signed by either landlord or tenants
 - a. "All rooms including laundry room, kitchen, living room, all 3 bedrooms, storage/nook room and bathroom are clean and no 'holes in walls', except furnace room has chip and smudges on one wall."

7) Landlord does not provide middle name when signed agreement on page 6

The parties agree that no move-out condition inspection report was made. The landlord testified the reason for this was that she understood the tenants all to have left town as of April 22, 2019, and she did not have notice of their departure until after they had already left. The tenant did not dispute this but testified that one of the non-party tenants returned at the end of May.

The landlord re-rented the rental unit as of June 1, 2019.

Analysis

Security Deposit

The landlord currently holds the tenant's \$700.00 security deposit in trust. I note that it is a breach of section 19 of the Act for a landlord to require or accept a security deposit greater than half the monthly rent. However, the Act does not contain a penalty clause should a landlord violate this section. Rather it is up to a tenant to demonstrate that the landlord's violation of this section caused them some form of damage, and the tenant may receive compensation for that damage. In this case, the tenant made no such claim.

Inspections

The landlord testified that she completed neither a move-in nor move-out condition inspection report. Rather, she noted the damage to the rental unit at the time of the move-in in the margin of the tenancy agreement.

The completion of condition inspection reports at the start and end of the tenancy are required by sections 23(4) and 35(3) of the Act, which state:

Condition inspection: start of tenancy or new pet

23(4) The landlord must complete a condition inspection report in accordance with the regulations.

Condition inspection: end of tenancy

35(3) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at sections 24(2) and 36(2) of the Act:

Consequences for tenant and landlord if report requirements not met

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

However, I find that the landlord is not claiming against the security deposit for damage to the rental unit (which would be extinguished per section 24(2) and 36(2) of the Act). Rather, she is claiming against the security deposit for unpaid rent. The Act does not prevent her from so doing.

As such, the fact that neither a move-in or move-out condition inspection report was not completed is not relevant to making a determination on this application. The landlord may take these reasons as a caution of the potential consequences of failing to complete condition inspection report for future tenancies (see also Policy Guideline 17).

Tenancy Agreement

In his submissions, the tenant raised creative arguments as to why the tenancy agreement should be considered void. However, it is not necessary for me to determine whether there is any merit to these arguments.

The tenant takes the position that the tenancy was on a month to month basis (called a “periodic tenancy” per section 1 of the Act). If this is correct (on which I make no finding), then the tenant would have been permitted to end the tenancy in accordance with section 45(1) of the Act, which reads:

Tenant's notice

45(1) A tenant may end a periodic 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, and

(b) 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.

The Tenant gave notice to end the tenancy on April 11, 2019. In this notice, he asserted that the tenancy would end on May 11, 2019 (that is, 30 days after the notice was given). However, this is not the correct method of calculating the date of the end of the tenancy.

Section 45(1)(a) requires that one months’ notice be given, but section 45(1)(b) requires that the day the notice is give is before the day before the day rent is due. Section 45 does not permit a tenant to end a tenancy in the middle of a rental period. If the tenant wanted to end the tenancy for April 30, 2019, he would have had to give notice of this no later than March 31, 2019. If he gave notice to end the tenancy in April 2019, the earliest the tenancy could end under the Act is May 31, 2019. This is the case here.

Section 53 of the Act functions to automatically change incorrect dates on notices to end tenancies to their earliest date that complies with the required notice period.

As such, it is not necessary for me to determine whether the tenancy agreement is void due to the deficiencies raised by the tenant. Under either scenario, I find that the tenancy would end on May 31, 2019.

As such, I find that the tenant is obligated to pay the landlord the balance of May’s monthly rent (\$868.00). The landlord may deduct the security deposit she currently holds in trust from this amount.

As the landlord has been successful in her application, she is entitled to recover her filing fee.

Conclusion

Pursuant to sections 38, 67, and 72, I order that the tenant pay the landlord \$286.00, calculated as follows:

May Rent	\$868.00
Filing Fee	\$100.00
Deposit	-\$700.00
Total	\$268.00

This order may be filed and enforced in the Provincial Court of British Columbia.

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: September 09, 2019

Residential Tenancy Branch