



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 468543 B.C. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and the landlord's agent (the "landlord") 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 with the landlord's application for dispute resolution via registered mail on June 4, 2020. The tenant confirmed receipt of the landlord's application for dispute resolution via registered mail on June 5, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that he thought he filed an amendment to add claims for damages to the subject rental property and for unpaid utilities. No amendment was on file and the tenant testified that she was not served with an amendment. I informed the landlord that he would have to file a new application for dispute resolution if he wished to pursue claims for unpaid utilities and damages to the subject rental property.

Preliminary Issue- Evidence

Both parties agree that they communicated about tenancy matters via text messages. The text messages were not entered into evidence. I provided the both parties 24 hours to upload the text message between the parties from April to June 2020. I find that neither party is prejudiced by the inclusion of the text messages into evidence as both parties confirmed they are both in possession of the text messages. I find that I require the text messages to determine this matter.

Text messages were uploaded into evidence by both parties within the 24 hour window provided.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2019 and has ended. This was originally a fixed term tenancy set to end on April 30, 2020. Monthly rent in the amount of \$3,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$500.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she moved out on May 31, 2020. The landlord testified that he was not sure but thought the tenant moved out on June 3, 2020. The landlord applied for dispute resolution on May 31, 2020. Both parties agree that a move out condition inspection report was completed on June 5, 2020. Both parties agree that the landlord did not ask the tenant to complete a move in condition inspection report and that no report was completed.

The tenant testified that she did not provide the landlord with the forwarding address at the end of the tenancy but that the landlord had her forwarding address on file. The landlord testified that he did not have the tenant's forwarding address on file and had to do some investigative work to find the tenant's forwarding address for service.

The tenant testified that she texted the landlord on April 22, 2020 and informed him that she planned on moving out of the subject rental property on May 31, 2020. The tenant testified that she also left a written notice to end tenancy in her planter box on April 22, 2020. The tenant testified that the landlord routinely picks up rent cheques from her planter box.

The landlord testified that the tenant did not provide him with written notice of her intention to move out of the subject rental property on May 31, 2020 and that he did not receive the letter the tenant says she left in her plant box. The landlord confirmed receipt of the April 22, 2020 text message.

On April 22, 2020 the following texts were exchanged between the parties:

- Tenant: "Hi [landlord]. I'll probably have something next week. Also I'd like to give you 1 month notice that we will be moving out end of May. Thanks."
- Landlord: "Thanks for the heads up, let me know when you can pay next week, and I'll need your new address, thanks again"

On May 3, 2020 the following text messages were exchanged between the parties:

- Landlord: "Hi [tenant], when is a good time to pick up some rent, and what are your plans as to paying the outstanding rent after you have moved out. Thanks"
- Tenant: "Hi [landlord] what do you know about the process for getting rent relief? Because I run my business out of my home I should be able to get some relief that way also. Do you have any information? I might need a

move out extension to June 5. You probably don't have it rented til June 15 or 30...."

The landlord did not respond to the tenant's request for extra time to move out.

On May 31, 2020 the tenant sent the following text message to the landlord:

- "Hi [landlord] is it possible to have an extra day or 2 to cleanup?"

On June 1, 2020 the following text message were exchanged between the parties:

- Landlord: "Text or call me when you are ready to do a final walk through"
- Tenant: "Ok thanks"

No text messages were exchanged on June 2, 2020.

On June 3, 2020 the following text message were exchanged between the parties:

- Landlord: "Will you be paying any rent this week?"
- Tenant: "Hi [landlord] I'll get you something this week. When did you want to do walk through?"
- Landlord: "Hi [tenant] I am available anytime for the walk through, what time is convenient for you?"

On June 4, 2020 the following text message were exchanged between the parties:

- Landlord: "Hi [tenant], the sooner we complete the walk through the sooner we can end the rental agreement the less it will cost in fees.
- Tenant: "I've been waiting to do walk through also. Yesterday I was waiting then it was late when you responded. How about tomorrow morning 11 am?"
- Landlord: "11 am tomorrow works fine, I'll see you then"

Both parties agree that the move out condition inspection and report were conducted on June 5, 2020.

The landlord testified that the tenant asked for extra time, until June 5, 2020 to move out of the subject rental property. The tenant testified that she requested extra time but that the landlord did not respond to that request so she moved out by May 31, 2020.

Both parties agree that the tenant did not pay rent for April and May 2020.

The landlord is seeking \$6,600.00 for April and May 2020's rent. The landlord's agent testified that the landlord is also seeking \$3,300.00 for June's rent and a further \$3,300.00 for improper notice to end tenancy. The landlord's total claim is \$13,200.00.

The tenant testified that she moved out at the end of May 2020 in accordance with her notice to end tenancy and so is not required to pay June 2020's rent or \$3,300.00 for providing improper notice. The tenant did not dispute owing \$6,600.00 for April and May 2020's rent. The tenant testified that she was unable to make her April and May 2020 rent payments due to losing her source of income due to COVID 19.

Analysis

Section 45(1) of the *Act* states that 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.

Section 88 of the *Act* sets out how documents, other than those set out in section 89 of the *Act*, are permitted to be served. Section 88 of the *Act* states:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service prescribed in the regulations.

Section 88 of the *Act* does list text messages as an approved method of service.

Section 71 of the *Act* states:

- (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
- (2) In addition to the authority under subsection (1), the director may make any of the following orders:
 - (a)that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
 - (b)that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
 - (c)that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Pursuant to section 71 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act* with the tenant's notice to end tenancy via text message on April 22, 2020, because the landlord responded to that text message on April 22, 2020. I find that the tenant's notice was provided to the landlord more than one clear month before the intended move out date.

I find that on May 31, 2020 the tenant asked the landlord for more time to clean the subject rental property which the landlord agreed to in his responding text on June 1,

2020, in which the landlord asked the tenant to inform him when the property was ready for final walk through. I find that the tenant agreed to the landlord's terms in her responding text of "ok". I find that the tenant did not inform the landlord when she finished cleaning the subject rental property and fully vacated the subject rental property until June 3, 2020. Based on the text messages entered into evidence, I find that the tenant overheld the subject rental property until June 3, 2020. The tenant asked for more time to clean the subject rental property and agreed to inform the landlord when that cleaning was complete and therefore when the landlord could regain possession of the subject rental property. I find that the tenant did so on June 3, 2020.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$3,300.00 on the first day of each month. Based on the testimony of both parties, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$6,600.00 in unpaid rent for April and May 2020.

I find that the tenant provided the landlord with one full month's notice to end tenancy, in accordance with section 45 of the *Act*. As such, I find that the landlord is not entitled to rent for the entire month of June and is not entitled to a penalty for improper notice as I have determined that the landlord was sufficiently served with the tenant's one month notice.

Residential Tenancy Policy Guideline #3 states:

A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

I find that the landlord is entitled to recover rent for the first three days in June 2020 as per the following calculation:

$$\begin{aligned} \$3,300.00 / 30 \text{ (days in June)} &= \$110.00 \text{ (daily rate)} \\ \$110.00 \text{ (daily rate)} \times \text{(days tenant overheld property)} &= \$330.00 \end{aligned}$$

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,150.00 and the tenant's pet damage deposit in the amount of \$500.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

| Item | Amount |
|-------------------------|-------------------|
| April rent | \$3,300.00 |
| May rent | \$3,300.00 |
| June rent | \$330.00 |
| Filing Fee | \$100.00 |
| Less security deposit | -\$1,150.00 |
| Less pet damage deposit | -\$500.00 |
| TOTAL | \$5,380.00 |

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 26, 2020

Residential Tenancy Branch