



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDR-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- a monetary order for money owed or compensation for damage or loss; and
- recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties raised no concerns or issues with the other's evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

At the hearing, the landlord submitted that he had amended his application for dispute resolution and increased his monetary claim; however, he confirmed that he had not served this amendment to the application to the respondent, the tenant.

Section 4.6 of the Rules require that copies of the amendment to an application for dispute resolution and supporting evidence must be produced and served on each respondent. This is as the respondent is entitled to know the claim against him.

I therefore decline to accept the amendment to the application for dispute resolution and the hearing proceeded on the landlord's original monetary claim.

Additionally, I have added a different spelling of the tenant's surname, as the written tenancy agreement reflects another version of the surname, including the tenant's signature. The tenant also included written evidence in which he indicated his surname was the same as listed in the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenant and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

The undisputed evidence shows that this month-to-month tenancy began on September 15, 2019, that monthly rent was \$1,600, and the tenant paid a security deposit of \$800 at the beginning of the tenancy.

The rental unit was the lower suite of a home owned and occupied by the landlord in the upper suite.

The tenancy agreement also shows that the tenant pays 40% of the hydro for the entire house, upper and lower.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for January 1-15, 2020	\$800.00
2. Hydro owed	\$91.50
3. Filing fee	\$100.00
TOTAL	\$991.50

The landlord has retained the tenant's security deposit, having made this claim against it.

I note that the landlord's application listed a total monetary claim of \$1,091.50; however, it appears from the description in the application the landlord listed the filing fee twice.

The landlord's relevant evidence included a copy of the written tenancy agreement and hydro bill for the time in question.

In support of his application, the landlord submitted that on December 13, 2019, he received an email from the tenant. In the email, the tenant informed the landlord he was vacating the rental unit by the end of December 2019.

The landlord submitted that the tenancy ended on December 22, 2019.

The landlord submitted that this insufficient notice caused a loss of rent revenue for January 1-15, 2020.

The landlord said that he initially claimed for half a month's rent as he had secured a new tenant for January 15, 2020; however, after his application was filed, the potential new tenants backed out of the tenancy, which led to the amendment to the original application, seeking a loss of rent for the entire month of January 2020.

As noted above, that increased monetary claim has been excluded.

As to the claim for hydro, the landlord said that the tenant was obligated to pay 40% of the bill and has not yet done so. The landlord explained that he was seeking 40%, the portion of the hydro usage as shown on the bill from December 11- 22, 2019.

The tenant's relevant evidence included -

The tenant did not dispute that the tenancy ended as stated by the landlord; however, there were many issues with the landlord, as stated in his written submission. Some issues included alleged harassment, insufficient separation between the rental unit's living room and the garage used by the landlord, and alleged interference with the tenant's quiet enjoyment.

The tenant also claimed that the rental period of the tenancy was from the 15th to the 15th day of each month.

In response to my inquiry, the tenant confirmed that he paid the monthly rent at the beginning of the month, as he had done for December 2019.

Landlord's rebuttal –

The landlord said that the monthly rent is due on the 1st day of the month, and that each rental month of the tenancy began on the first day of each month. In this case, the tenancy started on September 15, 2019, as the tenant wanted to move in earlier than the first day of October 2019.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Loss of rent, January 1-15, 2020 –

In this case, I accept that, although the tenancy began during the middle of a month, the obligation of the tenant was to pay the full rent on the first day of each month. The tenant confirmed he paid the monthly rent for the entire month of December 2019 at the beginning of December.

Under section 45(1) of the Act, a tenant may end a periodic, or month-to-month tenancy as in this case, by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenant wanted to end the tenancy by the end of December, 2019, the latest day the tenant could provide sufficient written notice to end the tenancy is November 30, 2019.

In the case before me, I accept that the tenant provided insufficient notice that he was ending the month-to-month tenancy agreement without a full calendar month's notice, as described above, and I find the tenant was responsible to pay monthly rent to the landlord the following month.

I find it reasonable that the landlord would be unable to find a new tenant for January 2020, when the tenant's notice to vacate was given on December 13, 2020. Additionally, the notice from the tenant to the landlord was not provided in a manner consistent with section 88 of the Act, as email is not listed as an accepted manner in which to serve written documents. Recognized ways in which to serve written documents include by mail or registered mail, personal service, leaving it in the mailbox or mail slot, or attaching it to a door.

I therefore find the landlord submitted sufficient evidence to support his claim for loss of rent revenue for January 1-15, 2020, and grant him a monetary award of \$800.

Hydro –

I find the tenant was obligated to pay 40% of the hydro bill pursuant to the term in the written tenancy agreement. I also find the landlord submitted sufficient evidence to verify the amount of the hydro bill through December 22, 2019, the last day of the tenancy.

I therefore find the landlord has established a monetary claim for hydro owed by the tenant in the amount of \$91.50.

Due to the successful application of the landlord, I award him recovery of the filing fee of \$100.

For the reasons above, I find the landlord has established a total monetary claim of \$991.50, comprised of loss of rent revenue for January 1-15, 2020, for \$800, unpaid hydro owed by the tenant for \$91.50, and the filing fee of \$100.

At the landlord's request, I direct him to retain the tenant's security deposit of \$800 in partial satisfaction of his monetary award of \$991.50. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$191.50.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted.

The landlord has established a monetary claim of \$991.50, has been authorized to retain the tenant's security deposit of \$800 and he has been awarded a monetary order for the balance due, in the amount of \$191.50.

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 5, 2020

Residential Tenancy Branch