



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL, MNDCL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord PB attended for the landlords ("the landlord") and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 11 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the

Notice of Hearing and the Application for Dispute Resolution by sending the documents to the tenant by registered mail on January 30, 2020, thereby effecting service 5 days later on February 4, 2020 pursuant to section 90. Considering the undisputed supported testimony of the landlord, I find the landlord served the tenant pursuant to the Act on February 4, 2020.

Issue(s) to be Decided

Is the landlord entitled to the following?

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The landlord provided uncontracted testimony as the tenant did not attend the hearing.

The landlord testified the parties entered into a month-to-month tenancy agreement signed January 5, 2020 for monthly rent of \$1,260.00 commencing February 1, 2020. The tenant provided a security deposit of \$675.00 which the landlord retains.

On January 25, 2020, the tenant sent the landlord an email stating he would not be moving in; he provided his forwarding address. The landlord testified she immediately attempted to rent the unit and the unit was not rented until March 1, 2020.

On January 28, 2020, the landlord brought this application for dispute resolution requesting a monetary order of one month's rent. The landlord also requested reimbursement of the filing fee and authorization to apply the security deposit to the award.

The landlord stated her claim as follows:

| ITEM | AMOUNT |
|------|--------|
|------|--------|

| | |
|--------------------------|-------------------|
| Rent for February 2020 | \$1,260.00 |
| Reimbursement filing fee | \$100.00 |
| (Less security deposit) | (\$675.00) |
| TOTAL CLAIM | \$1,360.00 |

Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the

other party.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The landlord was credible and well-prepared. The landlord's claim was supported in all respects by submitted documentary evidence.

Landlord's Claim for Rent

Generally speaking, rent must be paid in full and on time.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act and the agreement, unless the tenant has a right to deduct all or part of the rent.

The section states:

Rules about payment and non-payment of rent

26(1) 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.

The Act provides how a tenant gives notice to end a tenancy and states in section 45(1) as follows:

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 tenancy agreement was scheduled to commence on February 1, 2020 and the tenant provided one week's notice of intention not to move in. The tenant's notice did not comply with the tenant's obligation under section 45(1).

The landlord's testimony was supported in all material aspects by documentary evidence.

I find the landlord has met the burden of proof that the tenant did not pay rent for February 2020 as required in the tenancy agreement and Act. I find the tenant failed to comply with the Act and tenancy agreement.

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

his is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Landlord's claim for outstanding rent

Based on the landlord's testimony, I find that the landlord's loss of rent would not have occurred *but for* the tenant's failure to comply with the Act and the agreement.

3, Has applicant proven amount or value of damage or loss?

I find the landlord has met the burden of proof that the monthly rent was \$1,260. I find the landlord has established in the landlord's testimony supported in all material respects that the landlord has incurred the loss of rent claimed.

4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord's testimony, I find that they took reasonable steps to minimize the damage or loss by immediately advertising the unit for rent. I find the landlord described steps to find a replacement tenant that were reasonable and efficient. I accept that it would be realistic that no new occupant could be located on one week's notice.

I find the landlord made reasonable efforts to have the re-rental attended to in a cost and time efficient manner.

Conclusion

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order as follows:

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed.

My award to the landlord is summarized as follows:

| ITEM | AMOUNT |
|-----------------------------|-----------------|
| Rent for February 2020 | \$1,260.00 |
| Reimbursement filing fee | \$100.00 |
| (Less security deposit) | (\$675.00) |
| TOTAL MONETARY AWARD | \$685.00 |

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$685.00** which must be served on the tenant. The order may be filed in, and enforced as an order of, 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: June 18, 2020

Residential Tenancy Branch