



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHAGURA PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 25, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch were sent to each Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that the service address used was a forwarding address provided to him by the Tenants on March 05, 2020.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however, the Tenants did not appear at the hearing. As the aforementioned documents have been served to the Tenants the hearing proceeded in the absence of the Tenants and the evidence was accepted as evidence for these proceedings.

The Landlord and the Agent for the Landlord affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue, to compensation for unpaid utilities, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on April 01, 2019;
- the Tenants signed a fixed term tenancy agreement, the fixed term of which ended on March 31, 2020;
- the Tenants agreed to pay monthly rent of \$2,325.00 by the first day of each month;
- the Tenants fully vacated the unit, and returned the keys, on March 06, 2020;
- no rent was paid for March of 2020;
- the Tenants were required to pay for all utility charges incurred during the tenancy;
- the Tenants have not paid for any of the utility bill submitted in evidence, which is in the amount of \$427.62.

The Landlord stated that:

- the Tenants paid a security deposit of \$1,175.00;
- on January 30, 2020 the Tenants sent an email informing the Landlord they intended to vacate the unit by February 28, 2020;
- the rental unit was advertised on several popular websites on January 20, 2020; and
- the unit was re-rented for April 01, 2020.

The Landlord is seeking compensation, in the amount of \$2,325.00, for rent that was due for March of 2020.

The Landlord is seeking compensation, in the amount of \$427.62, in unpaid utilities.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a fixed term tenancy agreement, the fixed term of which ended on March 31, 2020, and that they agreed to pay rent of \$2,325.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenants returned the keys and vacated the rental unit on March 06, 2020.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

There is no evidence that the Landlord gave notice to end this tenancy pursuant to section 46, 47, 48, 49, 49.1, or 50 of the *Act*.

Section 45(1) of the *Act* allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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. As this tenancy was a fixed term tenancy, I find that the Tenants did not have the right to end the tenancy pursuant to section 45(1) of the *Act*.

Section 45(2) of the *Act* allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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. Although the Tenants gave the Landlord notice of their intent to vacate the rental unit on February 28, 2020, I find that they did not have the right to end the tenancy on that date, pursuant to section 45(2) of the *Act*, as the fixed term of the tenancy did not end until March 31, 2020.

As neither party gave proper notice to end this tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that there was a term in the tenancy agreement requiring the Tenants to vacate the unit at the end of the fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that both parties agreed in

writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenants fully vacated the unit and returned the keys on March 06, 2020.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenants had not properly ended the tenancy by March 01, 2020, I find that they were obligated to pay all of the rent that was due on that date, pursuant to section 26 of the *Act*. Section 26 of the *Act* requires tenants to pay all rent when it is due. I therefore find that the Tenants must pay the \$2,325.00 in rent that was due on March 01, 2020.

On the basis of the undisputed evidence, I find that the Tenants were required to pay for utilities charges incurred during the tenancy and that they have not paid any of the utility bill submitted in evidence. I therefore find that they must pay the Landlord \$427.62 for utilities.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,852.62, which includes \$2,325.00 in rent, \$427.62 for unpaid utilities, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,175.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,677.62. In the event the Tenants do not voluntarily comply with this Order, it may be

served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: July 22, 2020

Residential Tenancy Branch