



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Infinity Enterprises Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On April 17, 2020 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant’s Representative P.B. attended the hearing at the appointed date and time.

At the beginning of the hearing, P.B. acknowledged receipt of the application and documentary evidence packages. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the security deposit, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the sublease fixed term tenancy began on November 15, 2019 and was meant to end on May 15, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$4,000.00 to the Landlord on the 15th day of each month. The Tenant paid a security deposit in the amount of \$2,000.00 which the Landlord continues to hold. The tenancy ended on April 15, 2020.

During the hearing, the parties testified and agreed that they had discussions about the possibility of ending the fixed term tenancy early. The Landlord stated that no such agreement was reached. The Tenant stated that the Landlord verbally agreed during a telephone conversation. The Landlord provided email conversations between the parties in support. The Tenant provided no documentary evidence in preparation for the hearing.

The Landlord stated that he is seeking compensation in the amount of \$4,000.00 for the loss of rent from April 15 to May 15, 2020 which represented the remaining portion of the fixed term tenancy. The Landlord is also claiming for \$60.48 for the cost of the cable bill which was not part of the rent each month. P.B. acknowledged that the Tenant would have been responsible for paying this amount, however, maintained the position that the tenancy ended early based on a mutual agreement.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the Act, A tenant may end a fixed term 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,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *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 Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, I accept that the parties were in discussion around ending the fixed term tenancy early. The Landlord stated that the parties did not agree to end the fixed term early, before the Tenant moved out on April 15, 2020. While P.B stated that the parties came to a mutual agreement to end the fixed term tenancy early, I find that the Tenant provided not evidence to support this claim.

I find that the Tenant breached Section 45 of the Act as the Tenant has provided no evidence to indicate that they were entitled to end the fixed term tenancy early. I find that the Landlord suffered a loss as a result of the Tenant's breach, in the amount of \$4,000.00 for the month of rent from April 15 to May 15, 2020 which is the remaining balance for the fixed term tenancy. I find that the Landlord is also entitled to compensation in the amount of \$60.48 for the cable bill relating to the last month of the tenancy.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,160.48, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,000.00
Cable Bill:	\$60.48
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$2,000.00</i>
TOTAL:	\$2,160.48

Conclusion

The Tenant breached the Act by ending their fixed term tenancy early. As such, the Landlord is granted a monetary order in the amount of \$2,160.48. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: July 28, 2020

Residential Tenancy Branch