



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNSD FF
 Tenants: MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on March 16, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on March 17, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting recovery of the security deposit and/or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing and provided affirmed testimony.

The Landlord testified the Notice of Dispute Resolution Proceeding package and documentary evidence was served on the Tenants by registered mail. The Tenants acknowledged receipt. In addition, the Tenants testified the Tenants' Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt. No further issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

In the Tenants' Application, their minor children, L.F. and X.Z., who are not named in the tenancy agreement submitted into evidence, were included as parties to the dispute. Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Tenants' Application and remove L.F. and X.Z. as parties.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order allowing them to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Are the Tenants entitled to an order granting recovery of the security deposit and/or pet damage deposit?
5. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
6. Are the Tenants entitled to an order granting recovery of the filing fee.?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms that a month-to-month tenancy began on July 1, 2019. The parties agreed the tenancy ended on March 15, 2020. Rent in the amount of \$2,000.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00, which the Landlord holds.

The parties provided testimony and documentary evidence describing the process leading to the end of the tenancy. The parties agreed the Landlord issued and the Tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2020 (the "Two Month Notice"). The parties also agreed that they signed a Mutual Agreement to End a Tenancy on February 15, 2020 (the "Mutual Agreement"). The Tenants testified they were advised by the Landlord that the Mutual Agreement was part of the process associated with the Two Month Notice and the sale of the rental property. Subsequently, the Tenants provided the Landlord with a 10-day written notice to end the tenancy pursuant to section 50 of the *Act*, dated February 27, 2020. Copies of these documents were submitted into evidence.

The Landlord's Claim

The Landlord claimed \$1,000.00 for unpaid rent for the period from March 1-15, 2020.

In reply, the Tenants acknowledged rent was not paid for that period because they had received the Two Month Notice and were entitled to compensation.

The Landlord also applied to recover the \$100.00 filing fee paid to make the Landlord's Application.

The Tenants' Claim

First, the Tenants' claimed \$1,000.00 in recovery of the security deposit held by the Landlord. The Tenants testified that a forwarding address was given to the Landlord in writing in the 10-day written notice dated February 27, 2020.

In reply, the Landlord acknowledged receipt of the 10-day written notice dated February 27, 2020 and confirmed that he holds the security deposit.

Second, the Tenants claimed \$1,000.00 as compensation under section 51(1) of the *Act*. The Tenants testified they were entitled to receive \$2,000.00 in compensation but acknowledged they withheld rent for the period from March 1-15, 2020 in partial satisfaction.

In reply, the Landlord did not dispute that the Tenants were entitled to compensation or that the Tenants withheld rent as claimed.

Finally, the Tenants claimed \$100.00 in recovery of the filing fee.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

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*. 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 parties 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 other. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the parties did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for unpaid rent, section 26(1) of the *Act* confirms 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.

In addition, section 50 of the *Act* states:

If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and*
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.*

[Reproduced as written.]

Section 50(2) of the *Act* confirms that if the tenant paid rent before giving the 10 days' written notice, the Landlord must refund any rent paid for a period after the effective date of the tenant's notice. The Tenants did not pay rent due on March 1, 2020 before giving the 10-day written notice. Therefore, I find subsection (2) does not apply.

In this case, pursuant to section 50(1)(b) of the *Act*, I find the Tenants were obligated to pay the proportion of rent due to the effective date of the 10-day written notice, which was March 15, 2020. They did not. Therefore, I find the Landlord has established an entitlement to a monetary award for unpaid rent from March 1-15, 2020 in the amount of \$1,000.00. I order that the security deposit held be applied in satisfaction of the Landlord's claim.

The Tenants' Claim

With respect to the Tenants' claim for compensation, section 51(1) of the *Act* states:

A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Reproduced as written.]

In this case, there was no dispute that the Landlord issued, and the Tenants received, the Two Month Notice dated January 29, 2020. Therefore, I find the Tenants became entitled to receive from the Landlord an amount equal to one month's rent, or \$2,000.00. I find that the Mutual Agreement did not impact the Tenants' right to compensation under section 51(1) of the *Act*. Rather, I find the Landlord put into motion a process to end the tenancy based on the Two Month Notice. While the parties signed the Mutual Agreement, I accept the Tenants' submission that they understood it to be required as part of the sale of the rental property. As a result, I find the Mutual Agreement did not vitiate the Two Month Notice or the Landlord's obligation to pay compensation. Similarly, I find that the 10-day written notice did not impact the Tenants' right to compensation under section 51(1) of the *Act*. Therefore, the Tenants are granted a monetary award in the amount of \$2,000.00.

With respect to the Tenants' claim to recover the security deposit, and despite my order that the Landlord retain the security deposit in satisfaction of his claim for unpaid rent, I find it is necessary to conduct an analysis of whether or not the Tenants are entitled to receive double the amount of the security deposit. Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Landlord was provided with a forwarding address in writing in the 10-day written notice dated February 27, 2020. However, the tenancy ended on March 15, 2020. As a result, pursuant to section 38(1) of the *Act*, the Landlord had until March 30, 2020 to repay the security deposit or make a claim against it by filing an application for dispute resolution. In this case, the Landlord's Application was made on time on March 16, 2020 and the Tenants are not entitled to receive double the amount of the security deposit. As I have ordered that the security deposit held be applied in satisfaction of the Landlord's claim for unpaid rent, I find the Tenants are not entitled to recover the security deposit held.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award for unpaid rent from March 1-15, 2020 in the amount of \$1,000.00, which is satisfied by my order permitting the Landlord to retain the security deposit.

The Tenants have demonstrated an entitlement to a monetary award in the amount of \$2,000.00 in compensation under section 51(1) of the *Act*. However, as noted above, the Tenants are not entitled to recover the \$1,000.00 security deposit which I have ordered be retained by the Landlord in satisfaction of his claim for unpaid rent.

As both parties had success, I decline to grant recovery of the filing fees paid to either party. Accordingly, pursuant to section 67 of the *Act*, I find Tenants are entitled to a monetary order in the amount of \$2,000.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,000.00. The order must be served on the Landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (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 24, 2020

Residential Tenancy Branch