



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

The landlord was represented at the hearing by property manager, RC. Both of the tenants attended the hearing and were represented by co-tenant, CS. As both parties were in attendance, service of documents was confirmed. The tenants confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and can the landlord retain the security deposit to satisfy it?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy agreement was signed by the landlord and one of the co-tenants, CS on March 3, 2020. Part 2 of the tenancy agreement states the tenancy agreement starts on April 1st, 2020 and is for a fixed term ending on the 31st of March 2021. Rent was set at \$1,200.00 payable on the first day of each month. On March 3rd, a security deposit of \$600.00 was collected by the landlord which the landlord continues to hold.

The landlord provided the following testimony. Based on the written tenancy agreement, the landlord understood the tenancy would begin on April 1, 2020. On March 30th, the tenant CS sent the building manager an email stating that she is a student and that both she and the other student lost their part time job due to the coronavirus pandemic. They wanted to '*cancel the deal to rent*' the rental unit. They understand that the damage deposit is to replay (sic) damage tenants cause during their stay and since they never moved in, they want it all back.

The property manager landlord returned the email the following day advising that cancelling the move-in on April 1st is a breach of the tenancy agreement. The landlord did not receive sufficient time to re-rent the unit and would retain the security deposit to help cover a portion of April rent. The email provides a list of resources to assist people affected by the covid-19 crisis.

On April 2nd, the tenant CS sent her forwarding address to the building manager and once again requested her security deposit. The property manager responded to this email on April 6th advising that because the tenant has provided her forwarding address, he would seek a monetary order for all of April's rent or until the unit gets re-rented.

The landlord testified that he was willing to accommodate the tenants' request to delay a move in until May 1st, on the condition that April rent be recovered incrementally during the remainder of the tenancy. The tenants were unwilling to compensate the landlord for losing out on April rent and chose not to move in at all. The landlord was able to secure a new tenant for April 15th and seeks a half month's rent for the first half of April that the rental unit remained vacant. He seeks to retain the \$600.00 security deposit to cover the loss.

The tenant CS provided the following testimony. She never met the property manager, she communicated solely with the building manager, R. She lost her job and was

unable to pay rent. Being a newcomer to Canada, she does not qualify for emergency pandemic benefits because she hasn't been here a year. When she first told the building manager about not being able to move in, the building manager told her there were others who would take the rental unit. There is no written documentation of this verbal exchange.

The offer to move in for May 1st was not workable for the tenants because their lack of ability to pay April's rent incrementally due to a loss of work. They would have done so if the landlord were willing to forego collecting April rent.

The tenant argues that the receipt provided for the security deposit on March 3rd does not indicate a move-in date, meaning the tenants were not obligated to move in on April 1st. The tenants allege the building manager asked them to move in on April 2nd or 3rd because the previous tenants wouldn't be able to move out by March 31st. There is no written record of this conversation.

Analysis

Section 7 of the Act states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the Residential Tenancy Act reads:

16 Start of rights and obligations under tenancy agreement

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy agreement is a binding contract between the parties stipulating the rights and obligations of both. The landlord and at least one of the tenants, CS signed the tenancy agreement on March 3, 2020 and part 2 of the tenancy agreement clearly states that the tenancy begins on April 1, 2020. The fact that the receipt for the security deposit does not specify a start date has no bearing on whether the tenant is required to fulfil the obligations stated in the tenancy agreement.

I am satisfied the tenants breached the tenancy agreement by failing to move in on the start date as specified on the tenancy agreement. I am satisfied that because the tenants breached the tenancy agreement and failed to move in on the date specified, the landlord has sustained a loss of rental income for the first half of April in the amount of \$600.00.

I am also satisfied the landlord mitigated the loss by looking for and finding a tenant as soon as possible, in this case within the month. I find the landlord is entitled to a monetary order in the amount of **\$600.00** pursuant to section 67 of the Act.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of **\$600.00**. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

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: August 17, 2020