



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0841583 BC Ltd. dba Sutton Group Del Mar
Realty and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$2,000.00, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Tenant acknowledged that he had not uploaded any documentary submissions to the RTB or for service on the Landlord.

Preliminary and Procedural Matters

The Landlord submitted the Parties' email addresses in the Application, and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's legal name in this

matter, as the Landlord identified on the Application was a “doing business” or “dba” name and not a legal name. The Agent advised me of the Landlord’s legal name, and as a result, I amended the Applicant’s name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 1, 2019, and ran to June 30, 2020, with a monthly rent of \$4,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$2,000.00, and no pet damage deposit.

In the hearing, the Agent said that the Landlord seeks half a month’s rent from the Tenant, because he gave insufficient notice to end the tenancy, pursuant to clause 4(c) of the tenancy agreement, which states:

4. RENTAL PERIOD AND TERMS OF TENANCY.

. . .

C. At the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term.

The Tenant said:

My comments are that before I rented the unit, it was clear that I would only be needing it for a year, while I was an orthopaedic trauma surgery fellow. It was clear that I would be moving out at the end of June. We had a text conversation stating that was the end of the tenancy. I don’t think these texts have been submitted.

In answer to the whether the Landlord knew that the Tenant was planning to move out at the end of June 2020, all along, the Agent said:

I never received the texts. We often get a contract of one year here, but that

often gets extended. Prior to a lease ending, I called [the Tenant] asking what his plans were . . . in an email, he thought the agreement was going to come to an end. He sent me the notice of the end of the tenancy on my request, in an email from June 7.

In answer to a question about the harm suffered by the Landlord, because of the insufficient notice, the Agent said: "We did our very best to mitigate the damages to get it rented out by July 1, but the best we could do was to get it rented by July 15."

The Tenant said:

I'd just like to say that [the Agent], when he emailed me on June 7, he stated that I was welcome to stay, but I wouldn't have to. I said I'd be moving out on June 30. I was quite surprised that he said I hadn't made my intentions noted. This was at the height of the pandemic, and I was at the largest hospital in B.C. His timing seems somewhat curious or convenient - a technicality to bring this up. I reconfirmed my intention to end the lease. I still wanted to be collegial, and to mitigate loss, and I advertised through my connections at the hospital, among fellows, students.... I even offered \$500.00 to subsidize the occupancy on July 1. When [the Agents] requested access to the suite, I allowed them to come in and show strangers the place I had rented, making sure to clean and sanitize both before and afterwards.

The Agent said:

I just want to reiterate that proper notice was not given with the Act. He did help with the showings and we appreciate that and largely because of that we were able to rent it out on July 15. We both worked on the same path, the same working relationship to get the place rented on time. Instead of being here to ask for all of July, I'm only asking for half of July. We worked on the same side to mitigate damages.

The Tenant said: "To reiterate my position, my intent was known the whole way through, and we did our best to avoid coming to this, but I guess this is where we're at."

Analysis

Based on the documentary evidence and the testimony provided during the hearing and on a balance of probabilities, I find the following.

Policy Guideline #16 states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Section 45 of the Act sets out a tenant's obligations for ending a tenancy. Section 45(2) addresses the requirements of a fixed term tenancy, as follows:

Tenant's notice

45 (2) 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.

...

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

While written notice may not be required of clause 4(c) of the tenancy agreement, section 45(4) of the Act requires that the notice comply with section 52 of the Act, as to form and content. Section 52 states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

...

I find that pursuant to the Act, the Tenant was required to give the Landlord written

notice to end the tenancy in May for an effective date at the end of June. This would have given the Landlord more time to find a new tenant for July 1, 2020. Accordingly, I find that the Tenant breached the Act and the tenancy agreement by giving insufficient notice to end the tenancy on June 30, 2020. According to the Act, the Tenant's notice dated June 7, 2020, was appropriate for an effective vacancy date of July 31, 2020.

However, I find that the Parties agreed that they worked together to mitigate the damage the Landlord incurred in lost rent for July 2020, such that the rental unit was re-rented as of July 15, 2020. I, therefore, find that the Tenant owes the Landlord compensation for the first two weeks of July 2020 in the amount of \$2,000.00. Accordingly, I award the Landlord with **\$2,000.00** from the Tenant.

I also award the Landlord with recovery of the **\$100.00** Application filing fee pursuant to section 72 of the Act, for a total monetary award of \$2,100.00.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$2,000.00. I authorize the Landlord to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary award.

I grant the Landlord a Monetary Order of **\$100.00** from the Tenant pursuant to section 67 of the Act, in full satisfaction of the Landlord's awards.

Conclusion

The Landlord's claim for retaining the Tenant's security deposit is successful in the amount of \$2,000.00. The Landlord provided sufficient evidence to establish that the Tenant breached the Act and the tenancy agreement by providing insufficient notice to end the tenancy.

The Landlord is also awarded \$100.00 in recovery of the Application filing fee for a total monetary award of **\$2,100.00**.

The Landlord is authorized to retain the Tenant's \$2,000.00 security deposit in partial satisfaction of the award. I grant the Landlord a Monetary Order of \$100.00 under section 67 of the Act in full satisfaction of the Landlord's monetary awards.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: November 18, 2020

Residential Tenancy Branch