



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S FFL

Introduction

The landlord applied for compensation under section 67 of the *Residential Tenancy Act* ("Act"). He also sought recovery of the filing fee under section 72 of the Act.

The landlord attended the hearing on January 22, 2021 at 1:30 PM, which was held by teleconference; the tenant did not attend the hearing, which ended at 1:46 PM.

The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceeding package by way of Canada Post registered mail on October 9, 2020. He had with him a copy of the receipt and tracking number. Based on this undisputed oral evidence of the landlord I find that the tenant was served in accordance and in compliance with section 89 of the Act.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recover the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on October 1, 2019 and ended on October 1, 2020. Monthly rent was \$1,400.00, due on the first day of the month. The tenant paid a security deposit of \$700.00. A copy of the Residential Tenancy Agreement was in evidence.

Also, in evidence is a copy of the tenant's "Move out Notice," dated September 1, 2020, in which they notify the landlord that they intend to vacate the rental unit on or before October 1, 2020. In addition, the landlord provided a one-page written submission regarding the facts of the case, including the fact that the tenant did not give proper notice pursuant to section 45(1) of the Act.

The landlord seeks compensation in the amount of \$1,400.00 for October 2020 rent due to late notice from the tenant. It should be noted, and the landlord provided sworn testimony regarding this fact, that the tenant agreed in writing to a \$277.00 deduction from the security deposit. A copy of a Condition Inspection Report – in which the tenant's written authorization to deduct from the security deposit – was submitted into evidence. Thus, the balance of the security deposit held in trust is \$523.00.

In respect of mitigating losses, the landlord showed the rental unit and has had an advertisement up and active since the tenant gave notice. It was only recently that the landlord was finally able to find a new tenant for March 2021.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Rent

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 45(1) of the Act sets out the legal requirements for a tenant ending a periodic, or month to month, tenancy:

A tenant may end a periodic 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, and

- (b) 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.

In this case, the tenant gave written notice on September 1, 2020 that she was ending the tenancy on October 1, 2020. As per the tenancy agreement, rent is due and payable on the first day of each month. Therefore, the tenant was required, in order for the tenancy to end at the end of September – and thus end the tenant's obligation to pay rent due on October 1, 2020 – to have provided notice no later than August 31, 2020. The tenant did not do this, and, thus having breached section 45(1)(b) of the Act, is liable for any losses that resulted. Those losses were in the amount of \$1,400.00, which was the rent for October 2020 and for which she was legally obligated to pay. The landlord, while running an advertisement and showing the rental unit, was unable to find a new tenant. He has, I find, done what was reasonable in mitigating his losses.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for \$1,400.00.

Claim to Recover Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Summary of Award, Retention of Security Deposit, and Monetary Order

A total of \$1,500.00 is therefore awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant's security deposit of \$523.00 in partial satisfaction of the above-noted award.

The balance of the award, \$977.00, is granted by way of a monetary order issued in conjunction with this decision.

Conclusion

I hereby grant the landlord's application.

A monetary order in the amount of \$977.00 is granted to the landlord, and the order must be served on the tenant. If the tenant fails to pay the landlord the amount owed within 15 days of being served the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 22, 2021

Residential Tenancy Branch