



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlord, the tenant, and the tenant's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties raised no issues regarding service of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Background and Evidence

The undisputed evidence from the hearing showed that this tenancy began on October 1, 2015 and ended on December 31, 2019. The monthly rent at the end of the tenancy was \$1,100. Filed into evidence was a copy of the written tenancy agreement.

The landlord submitted that the tenant was served a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), dated September 30, 2019, on October 1, 2019, listing a move-out date of December 31, 2019. Filed into evidence was a copy of the Notice.

The landlord acknowledged that the tenant was entitled to receive compensation equivalent to a month's rent; however, the tenant did not pay the monthly rent for November or December 2019. The landlord claims the amount of \$1,100, as unpaid monthly rent for one of the final two months of the tenancy.

Tenant's submissions –

The tenant submitted that he did not pay rent for the final two months of the tenancy, November and December 2019, due to a verbal agreement with the landlord. The tenant submitted that the landlord told him he did not have to pay these final two months in order to help him in finding a new place to live and with the moving expenses. Filed into evidence were two statements, by email, from acquaintances of the tenant.

The tenant said that he had a good relationship with the landlord up until the end of the tenancy and that he had worked for the landlord.

Tenant's legal counsel's submissions –

Counsel submitted that the landlord did not issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for either of the last two months of the tenancy, did not mention on the condition inspection report (CIR) that the tenant owed any sums, and returned the tenant's security deposit. Counsel argued that these facts indicate the parties had an agreement that the tenant did not have to pay rent the final two months of the tenancy.

Counsel argued Tenancy Policy Guideline 3, saying that the landlord never put the tenant on notice that he intended to sue the tenant for unpaid monthly rent, as required.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *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.*

...

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use, as is the case here, is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

In this case, the tenant was served the landlord's Notice on October 1, 2019, according to the landlord's testimony. The tenant was therefore allowed to withhold rent for either November or December 2019, to provide him compensation allowed under section 51 of the Act. Instead, the tenant withheld the monthly rent for both November and December 2019, in contravention of the Act and the tenancy agreement.

Although the tenant submitted that the parties had an agreement that he could have two months' monetary compensation, the alleged agreement was verbal. The landlord disagreed that there was an agreement. I find that this disputed oral evidence, without further proof, does not sufficiently establish the tenant's submission.

The tenant's evidence from two acquaintances only recounted hearsay information, told to them by the tenant. I did not find these emails containing hearsay statements supported the tenant's assertion.

While counsel argued that Tenancy Policy Guideline 3 applies here, I find it does not. This Guideline applies where a tenancy has ended and the tenant overholds in the rental unit or where the landlord elected to end a tenancy due to the fundamental breach of the tenant. Neither is the case here, as the tenancy ended due to the Two Month Notice issued to the tenant and the tenant vacated by the effective move-out date listed on the Notice.

For the above reasons, I find the tenant was obligated to pay all the monthly rent due under the tenancy agreement, with the exception of one of the final months of the tenancy, as compensation for having received the Notice from the landlord.

As the tenant withheld two months of rent, I find the landlord has established a monetary claim of \$1,100.

As the landlord is successful with his application, I grant him recovery of his filing fee of \$100 paid for this application.

Conclusion

The landlord has established a monetary claim, in the amount of \$1,200, which includes unpaid monthly rent of \$1,100 owed by the tenant and \$100 for recovery of his filing fee.

I grant the landlord a monetary order in the amount of \$1,200.

In the event the tenant does not voluntarily comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant is cautioned that costs of enforcement are recoverable from the tenant.

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: January 29, 2021

Residential Tenancy Branch