



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR-PP, FFL

Introduction

On November 13, 2020 the Landlords submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlords, the Landlords’ Counsel C.S., and the Tenant attended the hearing at the appointed date and time. C.S. stated that the Application and documentary evidence package was served to the Tenant by Registered Mail as well as by email on November 19, 2020 and again on January 6, 2021. The Landlords provided a copy of the Registered Mail receipts in support of the mailings. The Tenant stated that he did not notice that C.S. had emailed him until 10 days before the hearing. Furthermore, the Tenant stated that he did not received any Registered Mail from the Landlords.

Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on November 24, 2021 and January 11, 2021, the fifth day after the Registered Mailings. The Tenant did not submit documentary evidence in response to the Application.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the parties came to a mutual agreement to end the tenancy at 11:00 AM on February 6, 2021. The parties agreed that the Landlord would be granted the order of possession effective at 11:00 on February 6, 2021. The hearing continued based on the Landlords' Application for monetary compensation relating to unpaid rent, to retain the Tenant's security deposit and for the return of the filing fee.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 17, 2017. Rent in the amount of \$1,492.00 is due to the Landlords on the first 17th day of each month. The Tenant paid a security deposit in the amount of \$700.00, which the Landlords continue to hold.

C.S. stated that the Tenant failed to pay rent when due to the Landlords in April, May, June, July, and August 2020. C.S. stated that the parties had agreed to a repayment plan, however, the Tenant has yet to make any payments towards the outstanding balance of rent in the amount of \$7,460.00.

Furthermore, C.S. stated that the Landlords received the Tenant's Notice to End Tenancy on January 1, 2021, seeking to end the tenancy on January 16, 2021. C.S. stated that the Tenant did not provide the Landlords with proper notice to end tenancy, therefore, the Landlords are also seeking \$1,492.00 for the loss of rent from January 17 to February 16, 2021.

The Tenant responded by confirming that he did not pay rent to the Landlords in the amount of \$7,460.00 for April to August 2020 rent. The Tenant stated that he felt entitled to withholding his rent in relation to an incident where the Tenant's possessions were damaged. The Tenant also disagreed with having to pay an additional month of rent to the Landlords as he had indicated in his Notice to End Tenancy that he wished to end the tenancy on January 16, 2021 rather than February 16, 2021.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlords are claiming \$7,460.00 as the Tenant failed to pay rent to the Landlords when due for April, May, June, July, and August 2020. Section 26 of the Act explains that the 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.

I accept that the Tenant confirmed that this rent was not paid to the Landlords. While the Tenant stated that he felt entitled to retaining the rent, I find that the Tenant has provided insufficient evidence to demonstrate that the Tenant had the right to do so under the Act. As such, I find that the Tenant breached Section 26 of the Act. I find that the Landlords are entitled to monetary compensation in the amount of \$7,460.00 for the unpaid rent from April to August 2020. Should the Tenant feel as though he is entitled to monetary compensation, he is at liberty to submit his own application for dispute resolution.

The Landlords are also claiming \$1,492.00 in relation to the loss of rent from January 17 to February 16, 2021. I accept that the Tenant provided the Landlords with his Notice to End Tenancy on January 1, 2021 with an effective vacancy date of January 16, 2021.

According to Section 45(1) of the *Act*; 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, I find that the Tenant's Notice to End Tenancy takes effect the day before the day in the month that rent is payable, in this case January 16, 2021. As such, I find that the Tenant is responsible for paying the Landlords rent from January 17 to February 16, 2021 in the amount of **\$1,492.00**.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$8,952.00. Having been successful, I also find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords entitled to a monetary order in the amount of \$8,352.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$8,952.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-(\$700.00)</i>
TOTAL:	\$8,352.00

During the hearing, the Tenant agreed that he would prefer email service rather than providing the Landlords with his forwarding address. The Tenant confirmed that the Landlords' communication had gone into his "Junk" folder. The Tenant stated that he would now be checking his "Junk" folder regularly. The Landlords may wish to apply for Substituted Service in the future should they see it necessary.

Conclusion

The parties agreed that the tenancy will end at 11:00 AM on February 6, 2021. The Landlords are granted an order of possession, which will be effective at **11:00 AM on February 6, 2021** after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenant breached Section 26 and 45 of the *Act*. The Landlords are granted a monetary order in the amount of **\$8,352.00**. The monetary order should be served to the Tenant as soon as possible and 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: February 04, 2021

Residential Tenancy Branch