



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) by the landlords for a monetary order in the amount of \$1,200.00 for unpaid rent or utilities, and to recover the cost of the filing fee.

Landlord DB (landlord) and the tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence, and as a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2020. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy which the landlords continues to hold.

There is no dispute that the tenant sent an email to the landlords dated October 23, 2020, which reads in part:

Hello [first names of landlords],

I would like to take this opportunity to thank you for opening your home to me. Unfortunately, it truly is like sharing walls and being insider your home (there's no sound proofing, I can hear everything, & Ricky likes his music).

As I need a quiet place to live & study, I will be vacating on October 30, 2020 and ending the month to month tenancy. The lack of dedicated on-site parking stall is also problematic. As a City employee, it's not favourable for me to violate the municipal zoning and parking bylaws.

Let's schedule the walk through for October 31, 2020 and you are welcome to show the unit with 24 hours notice. I doubt you'll have problems renting it, and I will keep it nice and tidy.

Thanks again and kind regards, you are a lovely family.

[Name of tenant]

The landlord is claiming \$1,200.00 for what the landlord describes as insufficient notice under the Act. While the landlord writes that they were unable to rent the rental unit beyond November, they are only claiming for the unpaid/loss of November 2020 rent, plus the filing fee.

The tenant began by stating that they ended the tenancy due to breach of a material term. The tenant was advised that there was insufficient evidence submitted due to the tenant's notice failing to state any material breach in their notice, and also failed to provide sufficient time to address any material breach even if the tenant had alleged a

material breach, which the tenant did not do. I will address this further in my analysis below.

The second issue raised by the tenant was in reference to a written document dated February 10, 2021. In that document the tenant refers to the following primary issues, which I have numbered:

1. Illegal Suite
2. Life and Personal Safety Issues (Section 28 & 32 RTA)
3. Threat to Personal Security and the Right to Privacy (Section 28 RTA)
4. Maintenance of Appliances (Section 32 RTA)

The portion which refers to the Inspection Report the tenant confirmed was not a primary issue for ending the tenancy.

Regarding 1 above, the tenant alleges that the rental unit was not legal as parking was not provided. The landlord stated that parking was not provided for in the tenancy agreement. The tenancy agreement wording does not include parking in the monthly rent. While the tenant alleges other matters related to an illegal rental unit, the parties were advised that in BC, a tenancy agreement governs both authorized and unauthorized rental units. I will address this further in my analysis below.

Regarding 2 above, the tenant alleges that the landlord installed rear stairs in a “No Disturb” natural steep mountainous terrain zone with no permits, no hand railing, and no maintenance. While there were sentences included for this portion, none of them were raised in the tenant’s notice to end tenancy. As a result, I find this issue to be moot after the fact, which I will address further in my analysis below.

Regarding 3 above, the tenant alleges that the landlords did not disclose the location of the security cameras, the lengthy of time the video would be retained, or the purpose of the cameras. While there were sentences included for this portion, none of them were raised in the tenant’s notice to end tenancy. As a result, I find this issue to be moot after the fact, which I will address further in my analysis below.

Regarding 4 above, the tenant writes the following in part:

Per the “Good Behavior” contract the [surname of landlords] attached to the rental contract, they refused to service the appliances.

While there were sentences included for this portion, none of them were raised in the tenant's notice to end tenancy and the tenant admitted that they were not there long enough to have this addressed with the landlords. As a result, I find this issue to be moot after the fact, which I will address further in my analysis below.

Analysis

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

Firstly, in terms of the tenant's claim of a material breach of the tenancy agreement, section 45(3) of the Act states:

If a landlord has failed to comply with a material term of the tenancy agreement **and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In the matter before me the tenant provided insufficient evidence that a material breach was ever alleged in writing and more importantly, that the landlord was given a reasonable period after written notice to correct the material breach. Therefore, I afford no weight to this portion of the tenant's evidence.

Regarding 1 above, I afford no weight to the tenant's claim that the rental unit was illegal due to the fact that in BC, a tenancy agreement governs both authorized and unauthorized rental units. In other words, the tenant provided insufficient evidence that they performed reasonable due diligence before signing the tenancy agreement. In addition, section 16 of the Act applies, which states:

Start of rights and obligations under tenancy agreement

16 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.

As is noted in section 16 of the Act, the right and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, which in the matter before me was September 26, 2020, the date both parties signed and dated the tenancy agreement. In addition, I note the tenant states in their notice that the landlord should have no problem renting the unit. Furthermore, and at the very least I would have

expected the tenant to refer to issues described in 1 in their notice, which the tenant failed to do. Therefore, I afford no weight to this portion of the tenant's evidence.

Regarding 2 above, as none of these issues were raised in the tenant's notice to end tenancy, I find this issue to be moot after the fact. At the very least I would have expected the tenant to refer to issues described in 2 in their notice, which the tenant failed to do. Therefore, I afford no weight to this portion of the tenant's evidence.

Regarding 3 above, as none of these issues were raised in the tenant's notice to end tenancy, I find this issue to be moot after the fact. At the very least I would have expected the tenant to refer to issues described in 3 in their notice, which the tenant failed to do. In addition, the tenant thanks the landlords and state the landlords are a wonderful family, which I find shows no concern related to the safety of the tenant. Therefore, I afford no weight to this portion of the tenant's evidence.

Regarding 4 above, the tenant writes the following in part:

Per the "Good Behavior" contract the [surname of landlords] attached to the rental contract, they refused to service the appliances.

Firstly, the tenant admitted that they did not write to the landlord to request any repairs to any appliances and at the very least I would have expected the tenant to refer to issues described in 4 in their notice, which the tenant failed to do. Therefore, I afford no weight to this portion of the tenant's evidence.

Given the above, I find the tenant breached section 45(1) of the Act, which applies and states:

Tenant's notice

- 45(1) 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 the matter before me, the tenant only advised the landlords on October 23, 2020 that they would be vacating on October 30, 2020 and ended up returning the keys to the

rental unit on October 31, 2020. I find that ending the tenancy in this method was not an approved method for ending the tenancy and I find all of the evidence presented by the tenant to be grasping for reasons after the fact without sufficient evidence to support the reasons in the notice. Therefore, due to the tenant's breach of section 45(1) of the Act, I find the landlord has met the burden of proof and I grant the landlords **\$1,200.00** for loss of November 2020 rent.

As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the \$100.00 filing fee pursuant to section 72 of the Act.

Monetary Order – I find that the landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit plus interest as follows:

Loss of November 2020 rent	\$1,200.00
Filing fee	\$100.00
Subtotal	\$1,300.00
<i>(Less Tenant's Security Deposit with \$0.00 interest)</i>	<i>- (\$600.00)</i>
TOTAL OWING TO LANDLORD BY TENANT	\$700.00

Conclusion

The landlords' claim is fully successful.

I authorize the landlords to retain the tenant's full security deposit of \$600.00 in partial satisfaction of their monetary claim, and I grant the landlords a monetary order under section 67 for the balance due of \$700.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant not to breach section 45(1) of the Act in the future.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant.

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: February 19, 2021

Residential Tenancy Branch