



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee from the opposing party pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by property managers BW and KK. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution package and the landlord acknowledged service of the tenant's evidence. Both parties stated they had no issues with timely service of documents, and both were ready to have the merits of the landlord's application heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on April 3, 2019 and became a month to month tenancy at the end of the fixed term, on March 31, 2020. Rent was set at \$1,650.00 per month payable on the first day of each month. A security deposit of \$825.00 was collected by the landlord which the landlord continues to hold.

The tenant had been paying his rent via pre-authorized debit or PAD and some time in early December, 2020, the tenant asked to stop paying by PAD. This request was

granted, but when that happened, the tenant's chequing account was overdrawn, resulting in the tenant's first cheque being returned NSF. The landlord seeks to recover the \$25.00 fee for the NSF charge applied by the landlord's bank.

On or about December 16, 2020, the landlord received a notice to end tenancy from the tenant. A copy of the notice was provided as evidence. The signed notice states the tenant intends to move out of the rental unit on January 15-30, 2021.

On January 11, 2021, the tenant paid \$437.50 of the \$1,650.00 January rent. The tenant formally vacated the rental unit on January 26, 2021, leaving arrears in the amount of \$1,237.50, including the bank fee of \$25.00. The landlord seeks to retain the tenant's security deposit of \$825.00, lessening the compensation owed to the landlord down to \$412.50.

The tenant gave the following testimony. This was the tenant's first tenancy and he was unaccustomed to what the tenancy entails. He told the landlord that he wanted to end the tenancy prior to signing the notice to end tenancy, however he was never given instructions on how to go about doing so. The tenant "didn't understand how it works" and the landlord's agent was slow in providing responses to his enquiries.

The tenant testified he thought that by stating in the notice to end tenancy he intends to move out between January 15 to 30 meant the tenancy would end when he moved out and he would cease having to pay rent once he vacated. He was ready to move out the second or third week in January but was delayed in moving out because he was advised by the landlord that he had to have the rental unit professionally cleaned at the end of the tenancy. The tenant testified he wants the landlord to retain his security deposit to offset his arrears in rent for January. The tenant also acknowledged he is responsible for the NSF fee incurred by the landlord. The tenant testified he paid an additional \$75.00 to his bank for the error and he will pay the landlord's \$25.00 fee.

Analysis

At the time the tenant gave his notice, the parties were bound by the tenancy agreement on a month to month basis – also known as a periodic tenancy. Section 45 of the *Act* 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.

As the tenancy agreement stipulates, rent is payable on the first day of the month. Accordingly, the effective date on a notice to end tenancy given by the tenant must be the day before the day in the month that rent is payable under the tenancy agreement. In this case, the earliest effective date for a notice to end tenancy given in mid-December is January 31st. I find the tenant was obligated to pay rent for the entire month of January, since January 31st is the earliest date his notice to end tenancy could end the periodic tenancy. I award the landlord a monetary order for January 2021 rent, less any payments made.

The tenant acknowledged he is responsible for paying the \$25.00 NSF fee incurred by the landlord when his December cheque was returned. I award the landlord \$25.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
January 2021 rent	\$1,650.00
NSF fee	\$25.00
Less payment made January 11, 2021	(\$437.50)
Less security deposit	(\$825.00)
Filing fee	\$100.00
Total	\$512.50

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$512.50**.

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: June 11, 2021

Residential Tenancy Branch