



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties participated in the teleconference. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy began on September 1, 2020 with the monthly rent of \$1650.00 due on the first of each month. The tenant paid a security deposit of \$825.00 which the landlord still holds. On January 22, 2021, the tenant advised that he needed to end the tenancy as he was going back to China. The landlord testified that due to the short notice, she was unable to rent the unit for February 2021 and seeks the loss of revenue for that month along with the BC Hydro cost of \$96.05 and the \$100.00 filing fee for a total claim of \$1846.05.

The tenant gave the following testimony. The tenant testified that he did give short notice to move out, but the losses could have been avoided if the landlord had given him permission to sublet the unit for the remainder of the term. The tenant testified that he wanted the BC Hydro in his name and is unsure why the landlord kept it their name.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows. Section 45 of the *Act* addresses the issue before me as follows.

Tenant's notice

- 45** (2) A tenant may end a fixed term 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.

The tenant did not provide any documentary evidence that he had made requests to have a sublet agreement for the balance of his tenancy. The landlord testified that some unknown agent showed up at the move out inspection and then disappeared. The landlord testified that she was unsure of any sublet request. Based on the above, I find that the tenant did not act in accordance with section 45 of the Act and did not provide the landlord proper notice to end the tenancy, accordingly; I find that the landlord is entitled to the loss of rent for February 2021 in the amount of \$1650.00.

Furthermore, I find that the tenant is responsible for the BC Hydro cost of \$96.05 as per the tenancy agreement. The landlord is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$1846.05. I order that the landlord retain the \$825.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1021.05. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 07, 2021

Residential Tenancy Branch