



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDCL-S**
 MNSD

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”).

The landlord applied for:

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

The tenant applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenant did not attend the hearing although I left the teleconference hearing open throughout the hearing which commenced at 1:30 p.m. and ended at 1:50 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified that she was not served with the tenant’s Application for Dispute Resolution. The landlord testified she was unaware the tenant had ever filed an application.

The landlord testified she sent the tenant the Notice of Dispute Resolution Proceedings and a copy of her Application for Dispute Resolution by registered mail on June 1, 2021 and provided a tracking number, recorded on the cover page of this decision. The landlord testified the Notice of Dispute Resolution Proceedings was sent to the tenant at the forwarding address provided to the landlord on March 4, 2021 when it was posted to

the landlord's door. The forwarding address is a general delivery address at a postal station in BC. I note the tenant used the same address on his own Application for Dispute Resolution. The landlord testified that the Notice of Dispute Resolution Proceedings package was returned to her as unclaimed.

I am satisfied the landlord served the tenant with the Notice of Dispute Resolution Proceedings in accordance with section 89 and 90 of the Act on March 9, 2021, five days after it was sent to him at his forwarding address by registered mail. This hearing proceeded in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Can the landlord retain the security deposit?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a room in a rooming house owned by different people. The landlord manages the rooming house as a manager/tenant on behalf of the owners and has done so for the past 15 years.

The landlord testified that there was a written tenancy agreement, however none was supplied to me in evidence and the landlord was unable to find a copy of it during the hearing. The landlord testified that the tenancy began on February 1, 2021 with rent set at \$650.00 per month payable on the last day of each month. The landlord testified a condition inspection report was done at the commencement of the tenancy however none was provided for the hearing and the landlord was unable to locate it during this hearing. The landlord testified the tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The landlord testified that the tenant knocked on her door on February 28, 2021 and verbally advised her that his mother died, leaving him her house and that he would be moving out immediately. No written notice to end tenancy was given to the landlord. On March 4th, the tenant had someone tape a request for a return of the security deposit and notice of forwarding address to the landlord's door. No copy of that document was provided as evidence by the landlord.

The landlord testified that the tenant left the rental unit “a mess” and that there is still leftover garbage from the landlord on the residential premises. No photos of the mess and no condition inspection report was provided as evidence by the landlord.

The landlord seeks to retain the tenant’s \$325.00 security deposit for not being served with a full month’s notice to end tenancy.

Analysis

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered. Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant did not attend the hearing which was scheduled by conference call at 1:30 p.m. As he did not attend, he did not present evidence regarding the merits of his claim for me to consider, or satisfy me that on a balance of probabilities, the facts occurred as claimed. Consequently, I dismiss the tenants’ application without leave to reapply.

Based on the undisputed testimony of the landlord, I am satisfied that the tenancy began on February 1, 2021 and ended on February 28, 2021 when the tenant gave the landlord verbal notice that he was ending the tenancy.

Pursuant to section 45(1) of the *Residential Tenancy 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.

Schedule 12 of the Residential Tenancy Regulations states:

Ending the tenancy

12 (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

- (2) This notice must be in writing and must
 - (a) include the address of the rental unit,
 - (b) include the date the tenancy is to end,
 - (c) be signed and dated by the tenant, and
 - (d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

Based on the undisputed testimony of the landlord find that the tenant gave verbal notice to end the tenancy on February 28th and vacated the rental unit the same day. Giving the landlord one day's notice to end tenancy is contrary to section 45(1) of the Act and schedule 12 of the Regulations. For the tenant to give his notice to end tenancy on February 28th, the earliest date he could have ended the tenancy in accordance with the Act and regulations, would be March 31st. I find the tenant in breach of both section 45 of the Act and schedule 12 of the regulations.

I find the landlord is entitled to compensation for the half month's rent as applied for, in the amount of \$325.00 pursuant to section 67 of the Act. 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.

The landlord continues to hold the tenant's security deposit in the amount of \$325.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

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: July 26, 2021

Residential Tenancy Branch