



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINLINE LIVING PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S FFL

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* (“Act”), and they seek recovery of the filing fee under section 72 of the Act.

Only the landlord’s representative attended the hearing; neither tenant attended the hearing. I am satisfied based on evidence provided – which included email communication from each of the tenants’ respective email addresses – that the tenants were served in compliance with Act and the Rules of Procedure. The landlord’s representative (hereafter simply the “landlord”) testified that they served each tenant with the Notice of Dispute Resolution Proceeding package to their emails on or about March 18, 2021. It should be noted that service by email is permitted pursuant to section 43 of the *Residential Tenancy Regulation*.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

In this dispute, the tenancy began on September 1, 2020. It was a fixed term tenancy that was supposed to end on August 31, 2021. However, the tenants ended the tenancy early and vacated the rental unit on January 7, 2021.

On January 5, 2021, the tenant L. sent an email to the landlord in which the tenant stated, "This is our official notice and we will not be returning to the apartment." About an hour later the co-tenant S. also sent an email to the landlord in which he stated, "As [L.] has said, we will not be returning to the apartment and the suite is yours to show and rent."

While the tenants did not return the keys, and while their vehicle was observed in the parking spot reserved for them, they were not seen or heard from again after January 7. A Condition Inspection Report was completed on January 7, 2021, and this was in evidence. It should be noted that, according to the landlord, the tenants at no time provided their forwarding address.

Monthly rent was \$1,905.00 and which was due on the first day of the month. The tenants paid a security deposit of \$927.50 which the landlord currently holds in trust pending the outcome of this application. A copy of a written tenancy agreement was submitted into evidence.

The landlord seeks \$3,76.50 for unpaid rent for the months of January and February 2021 and for unpaid parking fees. A detailed ledger and a statement of account, which reflected the amounts owed, was submitted into evidence by the landlord.

Finally, the landlord testified that at some point shortly after the tenants gave notice the landlord moved forward with trying to find a new tenant, including advertising for the rental unit. A new tenant was eventually found for March 1.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenants did not pay rent when it was due on January 1, 2021. There is no evidence before me that the tenants had a legal right under the Act to not pay the rent.

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.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent for January 2021.

In respect of the claim for rent for February 2021, the tenants gave notice on January 5, 2021 that they were ending the fixed term tenancy. This notice did not, I find, comply with section 45(2) of the Act, in respect of how a fixed term tenancy may be ended. Nevertheless, the tenancy effectively ended when the tenants vacated the rental unit on January 7. See section 44(1) and 44(1)(d) of the Act, which states that a “tenancy ends only if one or more of the following applies: [. . .] the tenant vacates or abandons the rental unit.”

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

In this case, the tenants breached the Act and the tenancy agreement by giving an illegal notice to the tenancy and by vacating the rental unit in early January. But for the tenants' breach of the Act, and the tenancy agreement, the landlord would not have suffered the loss of February's rent. Further, I find that the landlord took reasonable steps to minimize the loss of rent for that month, by advertising the rental unit.

Given all of the above and taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent, loss of rent, and unpaid and lost parking fee, in the amount of \$3,767.50.

Finally, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee. In total, then, the landlord is awarded \$3,867.50.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenants' security deposit of \$927.50 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$2,940.00 is issued to the landlord, in conjunction with this decision. As explained during the hearing, the landlord must serve each tenant with a copy of this monetary order.

Conclusion

The landlord's application is hereby granted.

I grant the landlord a monetary order in the amount of \$2,940.00, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 9, 2021

Residential Tenancy Branch