



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 19, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation or loss; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on August 23, 2021 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail on March 26, 2021 to the forwarding address which was provided to the Landlord by the Tenant by text message on March 2, 2021. The Landlord provided copies of the Registered Mail receipts in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on March 31, 2021 the fifth day after their registered mailing. The Tenant submitted some evidence in response to the Application, however, no one attended the hearing for the Tenant to present their documentary evidence.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified to the following; the fixed term tenancy began on July 1, 2020 and was meant to continue until June 30, 2021 at which point the tenancy would convert to a periodic month to month tenancy. The Tenant was required to pay rent in the amount of \$1,825.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$912.50 which the Landlord has since returned to the Tenant, less the mutually agreed upon deductions. The tenancy ended early on February 28, 2021.

The Landlord testified that the Tenant provided the Landlord with their notice to end tenancy on January 22, 2021 with an effective vacancy date of March 1, 2021. The Landlord stated that he did not consent to end the tenancy early as it was a fixed term tenancy. The Landlord stated that after receiving the Tenant's notice, the Landlord placed several advertisements in an attempt to re-rent the rental unit. The Landlord stated that he was unsuccessful in securing a new occupant in time before the Tenant vacated the rental unit on February 28, 2021. The Landlord stated that he found a new occupant to move into the rental unit on April 1, 2021.

The Landlord stated that he is seeking compensation in the amount of \$1,825.00 for the loss of rent for March 2021, as the Landlord was unable to re-rent the rental unit until April 1, 2021. No one attended the hearing for the Tenant to respond to the Landlord's claim. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, 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 Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation.

Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, I find that based on the Landlord's uncontested testimony, that the Tenant ended the fixed term tenancy early. I find that there is no evidence to demonstrate that the Landlord breached a material term of the tenancy agreement. For these reasons, I find that the Tenant was not permitted to end the fixed term tenancy early and has therefore breached Section 45 of the Act.

I accept that the Landlord immediately placed several advertisements and conducted several showings in an attempt to re-rent the unit, however, was unable to find a new suitable occupant until April 1, 2021. I accept that this has resulted in the Landlord incurring a loss of rental income in the amount of \$1,825.00. I further find that the Landlord took reasonable steps to mitigate their loss. As such, I find that the Landlord is entitled to monetary compensation for the loss of rent for March 2021 in the amount of **\$1,825.00**.

Having been successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,925.00.

Conclusion

The Tenant breached the Act by ending their fixed term tenancy early. As such, the Landlord is granted a monetary order in the amount of \$1,925.00. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: August 24, 2021

Residential Tenancy Branch