



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 convened as a result of a Landlord's Application for Dispute Resolution, filed on March 7, 2021, wherein the Landlord sought monetary compensation from the Tenant for loss of rent, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was originally scheduled for June 8, 2021. As the Landlord had only served the Tenant by email, the matter was adjourned to 1:30 p.m. on September 28, 2021. Only the Landlord called into the hearing on September 28, 2021. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:42 p.m. Additionally, 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 system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on September 7, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 12, 2021 and I proceeded with the hearing in their absence.

The Landlord was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. He confirmed his understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began April 28, 2020. Monthly rent is \$800.00 per month and the Tenant paid a \$400.00 security deposit.

The Landlord stated that the Tenant gave notice to end his tenancy on February 22, 2021 with an effective date seven days later on February 29, 2021. Although the Landlord tried to rent the unit as quickly as possible, it was not re-rented until April 1,

2021 such that the Landlord suffered a loss of rent for March 2021 in the amount of \$800.00.

In the claim before me the Landlord sought monetary compensation from the Tenant in the amount of \$800.00 for loss of rental income as well as \$100.00 for the filing fee. The Landlord also sought to retain the Tenant's security deposit of \$400.00 towards the amounts awarded.

Analysis

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

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.
- (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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I accept the Landlord's undisputed testimony that the Tenant failed to give 30 days notice to end their tenancy as required by section 45. As the Tenant gave notice on February 22, 2021, the effective date of their notice is March 31, 2021.

I find the Landlord mitigated their losses by trying to re-rent the unit as soon as possible. Despite those efforts, the Landlord was not able to re-rent the unit until April 1, 2021 such that the Landlord suffered a loss of rent for the month of March 2021. I find this loss to be recoverable from the Tenant. I therefore award the Landlord the \$800.00 claimed for rent for March 2021.

As the Landlord has been successful in this claim, the Landlord is also entitled to recover the \$100.00 filing fee for a total award of \$900.00.

I authorize the Landlord to retain the Tenant's \$400.00 security deposit towards the amounts awarded and I grant the Landlord a monetary order in the amount of **\$500.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's request for compensation in the amount of \$800.00 for loss of rent for the month of March 2021 is granted. The Landlord is also entitled to recover the filing fee. The Landlord may retain the Tenant's \$400.00 security deposit towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$500.00**.

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: September 28, 2021

Residential Tenancy Branch