



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1150715 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 11, 2021, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent, authority to retain the Tenant's security and pet damage deposit towards any amounts awarded, and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on November 9, 2021. Only the Landlord's Agents, J.G. and A.G. called into the hearing. They gave affirmed testimony and were 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 1:40 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's Agents 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. J.G. testified that they served the Tenant with the Notice of Hearing and the Application on May 21, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 May 26, 2021 and I proceeded with the hearing in their absence.

The Landlord's Agents were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*; in response they confirmed their 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 Agent's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agents 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 for unpaid rent?
2. Should the Landlord be authorized to retain the Tenant's security and pet damage deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this one-year fixed term tenancy began July 1, 2020 and was to continue until June 30, 2021. The Tenant was obligated to pay monthly rent in the amount of \$1,250.00. The Tenant also paid a \$625.00 security deposit and \$625.00 pet damage deposit which the Landlord continues to hold in trust.

J.G. testified that on March 31, 2021 the Tenant gave notice to end their tenancy effective immediately; a copy of the Tenant's written notice was provided in evidence before me. The Tenant failed to pay rent for April 2021.

J.G. further testified that the Landlord attempted to re-rent the unit as quickly as possible but was not able to rent it again until May 2021. Accordingly, the Landlord lost rent for the month of April 2021.

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.

A copy of the Tenant's notice to end tenancy was provided in evidence before me. As the notice was given on March 31, 2021, the effective date of the notice pursuant to section 45(2) of the *Act*, is April 30, 2021.

I accept J.G.'s testimony that the Tenant failed to pay rent for April 2021. I further accept J.G.'s testimony that the Landlord attempted to re-rent the unit for April, but as the Tenant only gave notice on March 31, 2021, it was not possible to re-rent the unit until May 1, 2021. I find the Landlord suffered a loss of rent for April 2021 which was a direct result of the Tenant failing to give proper notice to end their tenancy. I also point out that the Tenant was potentially liable for the rent owing for the balance of the fixed term until June 30, 2021; fortunately for the Tenant, the Landlord mitigated their losses by re-renting the unit as soon as possible.

I find the Landlord is entitled to compensation from the Tenant for unpaid rent for April 2021. I therefore award the Landlord the **\$1,250.00** claimed. As the Landlord has been successful in this Application, I also award them recovery of the filing fee pursuant to section 72 of the *Act* for a total award of **\$1,350.00**.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's security and pet damage deposit in the total amount of \$1,250.00 and I award the Landlord a Monetary Order for the **\$100.00** balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court.

Conclusion

The Landlord's Application for monetary compensation from the Tenant for unpaid rent and recovery of the filing fee is granted. The Landlord may retain the Tenant's security

and pet damage deposit towards the amounts awarded and is granted a Monetary Order for the \$100.00 balance due.

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: November 09, 2021

Residential Tenancy Branch