



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0937822 B.C. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord filed an application for dispute resolution (the “Application”) on May 14, 2021 seeking an order for compensation for unpaid rent. Additionally, they seek to recover the filing fee for the Application.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties addressed the issue of the tenancy and the agreement that was in place. The landlord provided a copy the final page of the tenancy agreement, to show the tenant signed the agreement on April 8, 2021. In the landlord’s evidence there is also a page from a separate document numbered as page 4, showing the tenant’s signature on April 8, 2021. The landlord also submitted a 6-page tenancy agreement, though unsigned. This shows the details of the tenancy: starting on May 1, 2021, with the rent

amount of \$3,000. The tenant paid a security deposit amount of \$1,500, transaction completed when the landlord accepted the e-transfer on April 10, 2021. Both parties confirmed this amount, being one-half of the stated monthly rent amount. The text messages about the deposit transfer are in the landlord's evidence.

The tenant confirmed they signed a single-page document. The landlord confirmed this detail, stating the tenant sent a single-page image of that signed document to him. The landlord did not have the chance to sign the tenancy agreement and provide that back to the tenant.

The landlord gave testimony on the prospective tenancy. They met the tenant initially when the previous occupants were still in the rental unit until April 30. This tenant was planning to modify the décor of the rental unit. Around the end of April, the tenant noticed mold, and stated their concern to the landlord.

The tenant confirmed the first time they noticed mold was on April 22. They hired a contractor on their own, and this was the first opinion they had about that issue. On the 27th, a hired painter noticed mold and said there was no immediate fix to that issue – if it was not dealt with properly it would take months. This painter provided a statement that appears in the tenant's evidence attesting to this piece of their testimony.

The tenant then inquired about filing a formal complaint with the city; however, the city would not proceed where they discovered the building was not a legal rental unit. Because of the two conjoined issues, the tenant did not pay rent for the 1st of May and moved out from the rental unit.

The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent the following day, on May 2. This gave the tenant the move-out date of May 12, listing the unpaid amount of rent as \$3,000. The landlord claims this amount of rent; this is the total of their claim for compensation. The landlord testified they had new renters in place for June 1, the following month.

Analysis

I refer to the *Act* in order to determine each party's rights and obligations in this dispute. The *Act* s. 1 gives pertinent definitions:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“tenant” includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

A tenancy agreement confers rights and obligations, by s. 16:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this instance, I find a tenancy agreement was in place between the parties. The fact that the landlord may not have been in compliance with local bylaws – i.e., what the tenant discovered when making inquiries on mold testing – does not invalidate the tenancy agreement. Payment of the security deposit, such as it happened here, is an element of *consideration* which is fundamental to any contract. That in itself does not determine the existence of a tenancy agreement. What is binding in this present scenario is the tenant signing the agreement, as shown in the evidence, on April 8, 2021.

Turning back to the *Act*, a tenant has ability to end a tenancy within strict timelines, as set out in s. 45. The subs. (4) provides that a notice must comply with s 52, which provides a notice to end tenancy must be in writing, and must be signed and dated, state the effective date, as well as state the grounds for ending the tenancy.

More broadly, to be successful in a claim for monetary compensation for loss the Landlord has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the Landlord must provide sufficient evidence to establish any alleged loss stems from an existing tenancy

I find the evidence shows the tenant paid a security deposit amount of \$1,500. Both parties attested to this in the hearing. Additionally, the agreement shows the agreement continues on a month-to-month term until ended in accordance with the *Act*. The signed tenancy agreement is a legally binding contract and is explicit that the *Act* applies.

With these factors in mind, I find there was a tenancy agreement in place between the parties. The *Act* provides that this can be an oral agreement, and the agreement can be implied. I find the parties had such an agreement, and the landlord-tenant relation was established. This is bolstered by the procurement of a security deposit.

With reference to s. 16, I find the agreement conferred rights and obligations. Along with this comes the duty to give a proper notice to end the tenancy. There is no evidence the Tenant gave proper notice to the Landlord within the timelines set by the *Act*. Because of this, the landlord suffered a loss without a tenant in place for the month of May. With regard to the four points set out above, I find from this that a loss to the landlord exists, and it was from a violation of the *Act*.

The landlord testified they had a new tenant in place for June 2021. I find the landlord minimized their loss by obtaining a new tenant.

Because the landlord has satisfactorily established the four criteria listed above, I award the landlord the amount of \$3,000 as recompense for their loss.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord has established a claim of \$3,000. After setting off the security deposit of \$1,500, there is a balance of \$1,500. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,500. This is an application of s. 72(2)(b) of the *Act*.

As the landlord is successful in this application for compensation, I find that the Landlord is entitled to recover the \$100 filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,600 for monetary loss. The Landlord is provided with this Order in the

above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 17, 2021

Residential Tenancy Branch