



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

This hearing was scheduled to commence at 1:30 p.m. on November 09, 2021. The Tenant attended the hearing at the scheduled start time but the Landlord did not attend the hearing until 1:43 p.m. All of the information provided by the Tenant prior to 1:43 p.m. was discussed again after the Landlord joined the teleconference.

Preliminary Matter #2

The Landlord stated that on May 24, 2021 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via email. The Landlord cited the email address used to serve the Tenant.

The Tenant state that he did not receive hearing documents that were emailed to the aforementioned email address, and that he no longer uses the email address cited by the Landlord.

The Tenant stated that he learned of these proceedings when he telephoned the Residential Tenancy Branch to discuss whether he should file an Application for Dispute Resolution seeking the return of his deposit. He stated that he was provided with the telephone numbers and codes needed to dial into this teleconference but was given little information about the nature of the Landlord's Application for Dispute Resolution.

The purpose of serving the Dispute Resolution Package to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Residential Tenancy Act (Act)* permits a party to serve an Application for Dispute Resolution to the other party in the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1);
- (f) by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person. This must be an address that the party provided to the other party for the purposes of serving important documents pertaining to their tenancy.

The Landlord was asked if the Tenant gave him permission to serve hearing documents to an email address provided by the Tenant. He initially stated that the Tenant provided him with an email address to be used for service of documents by writing it on the final condition inspection report, which the Tenant denied. The Landlord was asked to view the final condition inspection report to determine whether the Tenant's email address is written anywhere on that document, and he conceded that it was not.

The Landlord then stated that the Tenant provided him with an email address on November 26, 2018, which is the email address he used to serve hearing documents. The Tenant stated that he is no longer using this email address and that he has previously told the Landlord not to use this email address.

I find that the Landlord has failed to meet the burden of proving that he had the right to serve hearing documents to the Tenant by email. In reaching this conclusion I was influenced by the Tenant's testimony that he no longer uses the email address relied upon by the Landlord and that he has told the Landlord not to use that address. Given that this email address was provided in 2018 and there is no evidence before me to show that the parties recently communicated via that email address, I am not satisfied the Landlord had the right to serve documents to that address.

The parties were advised that the Landlord's Application for Dispute Resolution would be dismissed, with leave to reapply. The Tenant stated that he would be willing to proceed with the hearing in an attempt to resolve the matter without further delay.

The Tenant was advised that I would proceed with the hearing, with his consent; that I would clearly outline the claims being made by the Landlord; and that I would grant an adjournment at any time during the hearing if the Tenant needed time to consider the claims being made by the Landlord. The Tenant agreed to proceed with the hearing under these conditions. At the conclusion of the hearing the Tenant stated that an adjournment was not necessary.

The Landlord was advised that if the hearing proceeded, I would be unable to accept the evidence he submitted for these proceedings, as they were not properly served to the Tenant. The Landlord was advised that he could speak to those documents, but I would be unable to view them. The Landlord agreed to proceed with the hearing under these conditions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for replacing lightbulbs, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in November of 2018;
- rent of \$3,150.00 was due by the first day of each month;
- the Tenant paid a security deposit of \$1,575.00; and
- on December 30, 2020 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause;
- the declared effective date of the One Month Notice to End Tenancy for Cause was February 01, 2021;
- the Tenant disputed the One Month Notice to End Tenancy for Cause;
- a hearing was convened on April 06, 2021 to consider the merits of the One Month Notice to End Tenancy for Cause;
- at the conclusion of the hearing on April 06, 2021 the Landlord was granted an Order of Possession, which required the Tenant to vacate the unit by April 30, 2021;
- the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, dated February 05, 2021;
- the declared effective date of the Two Month Notice to End Tenancy for Landlord's Use was May 01, 2021;
- the rental unit was vacated on April 30, 2021;
- no rent was paid for April of 2021; and
- the Tenant provided a forwarding address, in writing, on April 30, 2021.

Residential Tenancy Branch records show that the Landlord filed this Application for Dispute Resolution on May 11, 2021.

The Landlord is seeking \$3,150.00 in rent for April of 2021, which has not been paid.

The Tenant submits that he was not required to pay rent for April of 2021, as he is entitled to one free month's rent as a result of being served with a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord submits the Tenant is not entitled to one free month's rent as it would not have been necessary to serve the Two Month Notice to End Tenancy for Landlord's Use if the Tenant had vacated on the basis of the One Month Notice to End Tenancy for Cause or the hearing in regard to the One Month Notice to End Tenancy for Cause had been convened in a more timely manner. He stated that he sold the rental unit and needed to serve the Two Month Notice to End Tenancy for Landlord's Use to ensure the unit would be vacated by May 01, 2021. He submits that he should not be penalized by delays in scheduling hearings.

The Landlord is seeking compensation, in the amount of \$301.74, for replacing lightbulbs in the rental unit. The parties agreed that some lightbulbs had burned out during the tenancy and were not replaced. At the hearing the Landlord agreed to reduce the amount of this claim to \$40.00 and the Tenant agreed to pay that amount.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution on May 11, 2021, which is less than 15 days after the end of the tenancy ended on April 30, 2021.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord complied with section 38(1) of the *Act*, I find that the Landlord is not required to pay the Tenant double the security deposit.

Section 49(5) of the *Act* permits a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or

a close family member of the purchaser, intends in good faith to occupy the rental unit, or the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Landlord sold this rental unit and that the Landlord subsequently served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, dated February 05, 2021, which was served pursuant to section 49(5) of the *Act*. The undisputed evidence is that the Two Month Notice to End Tenancy for Landlord's Use declared that the Tenant must vacate the rental unit by May 01, 2021.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on, or before, the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. I specifically note that the legislation does not specify that the Tenant is entitled to compensation if the tenancy ends pursuant to section 49 of the *Act*. Rather, the legislation specifies that a tenant is entitled to this compensation if the tenant receives a notice to end a tenancy under section 49 of the *Act*.

As the Tenant received a Two Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*, I find that the Tenant is entitled to compensation pursuant to section 51(1) of the *Act*. I am aware of nothing in the legislation that precludes the Tenant from receiving this compensation, even if the tenancy ends for an unrelated reason prior to the effective date of the Two Month Notice to End Tenancy for Landlord's Use.

As the Tenant is entitled to receive the equivalent of one month's rent, pursuant to section 51(1) of the *Act*, I find that he was not obligated to pay rent for April of 2021. I therefore dismiss the Landlord's application for unpaid rent for April of 2021.

Section 47(4) of the *Act* grants tenants the right to dispute a One Month Notice to End Tenancy for Cause. While I accept the Landlord's submission that the Landlord would not have needed to serve the Two Month Notice to End Tenancy for Landlord's Use if the Tenant had simply vacated the rental unit by the effective date of the One Month Notice to End Tenancy for Cause, I find that the Tenant was not obligated to vacate the

rental unit on the effective date of the One Month Notice to End Tenancy for Cause because the Tenant exercised his right to dispute that Notice to End Tenancy.

While delays in dispute resolution proceedings are always regrettable, I cannot conclude that the delay in considering the merits of the One Month Notice to End Tenancy for Cause required the Landlord to serve a Two Month Notice to End Tenancy for Landlord's Use. The Landlord had the option of simply waiting until the hearing on April 06, 2021 to determine if the One Month Notice to End Tenancy for Cause would be upheld. In these circumstances it was upheld and the Landlord received an Order of Possession that required the Tenant to vacate the unit by April 30, 2021, which is earlier than the declared effective date of the Two Month Notice to End Tenancy for Landlord's Use.

Rather than waiting to see if the One Month Notice to End Tenancy for Cause was upheld on April 06, 2021, the Landlord opted to serve a Two Month Notice to End Tenancy for Landlord's Use in an attempt to ensure the rental unit would be vacated by May 01, 2021. The Landlord had the right to serve this second notice to end tenancy, in an attempt to ensure the rental unit would be vacated. In doing so, however, the Landlord became obligated to provide the Tenant with one free month's rent.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace lightbulbs during the hearing. As the Landlord agreed to reduce the amount of this claim to \$40.00 and the Tenant agreed to pay that amount for replacing lightbulbs, I find the Tenant owes the Landlord \$40.00.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$140.00, which includes \$40.00 for replacing light bulbs and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$140.00 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlord has failed to establish the right to keep all of the Tenant's security deposit, he must return the remaining \$1,435.00. Based on these determinations I grant the Tenant a monetary Order for the balance \$1,435.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Act*.

Dated: November 11, 2021

Residential Tenancy Branch