



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “*Act*”):

- An order for unpaid rent by claiming against the security deposit pursuant to s. 72 of the *Act*; and
- Return of his filing fee pursuant to s. 72.

P.R. appeared as the Landlord. A.R. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that he served the Notice of Dispute Resolution via registered mail sent on December 24, 2021. The Tenant acknowledges receipt of the Notice of Dispute Resolution. I find that the application was served in accordance with s. 89 of the *Act*. No evidence from the Landlord was served or provided to the Residential Tenancy Branch.

The Tenant advised that he served his response evidence on the Landlord by way of registered mail sent on July 8, 2022. The Landlord acknowledges receipt of the Tenant’s response evidence. I find that the Tenant’s evidence was served in accordance with s. 89 of the *Act*.

Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on February 9, 2019.
- The Landlord obtained vacant possession of the rental unit on November 20, 2021.
- Rent of \$2,100.00 was payable on the first day of each month.
- The Landlord holds a security deposit of \$1,050.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Tenant. The parties confirmed that the term of the tenancy was on a month-to-month basis.

The Landlord advised that he is the property owner and that the landlord as listed in the tenancy agreement was his property manager.

The Landlord says that the Tenant vacated the rental unit without giving proper notice. He says that the Tenant gave notice on November 18, 2021 that he would be vacating. The Landlord seeks unpaid rent for December 2021 and indicates that the rental unit was re-rented on January 1, 2022.

The Tenant does not deny ending the tenancy with short notice but argues that he did so on the basis of what he characterized as a unilateral breach of the contract by the Landlord. The Tenant's evidence includes a letter dated November 19, 2021 which informed the Landlord's property manager that he would be ending the tenancy effective on November 20, 2021. As described in the letter, the cause was because "the contract was unilaterally breached in material terms when the landlord did not comply the current Real Estate rules for leasing in B.C.". The letter goes on to provide which alleged breaches occurred.

As described to me by the parties, there was a dispute with respect to a water leak within the rental unit. The Tenant says that the leak had been present since December 2019. The Tenant further says that the Landlord failed to repair the water leak despite being asked to do so. The Landlord denies this and indicates that the issue is one of the Tenants overflowing the bathtub, which caused the leak and damage to the

baseboards. The Landlord further states that the rental unit's current tenant has made no complaint of a water leak since taking possession.

The Tenant's evidence includes a letter dated November 15, 2021 warning that if a certified plumber did not attend, he and his family would be vacating on the 20th. The Tenant advises that he had applied to have the leak repaired when he filed to dispute a previous One-Month Notice. The issue of the repair was severed from the application. The Tenant provides a file number, which indicates that application was heard on September 16, 2021 and a decision rendered on September 17, 2021.

The parties confirmed that the Tenant provided his forwarding address on November 28, 2021.

Analysis

The Landlord seeks an order for unpaid rent due to the Tenant's alleged failure to provide proper notice. The Landlord seeks to retain the security deposit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 45 of the *Act* governs how and when a tenant may end a tenancy. It is reproduced below:

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]*.

Presently, the only part of s. 45 that may be application would be s. 45(3) as the Tenant admits that notice was not provided as required under s. 45(1).

Section 45(3) imposes the following requirements:

- Written notice of a material breach by the landlord; and
- Warning that the tenant may end the tenancy on an effective date after the notice is received if the breach is not corrected.

Though the Tenant made no submissions on the whether any of the letters in evidence fell within the ambit of s. 45(3), the Tenant's letter to the Landlord dated November 15, 2021 could be considered written notice to the Landlord of a breach that may compromise the tenancy. Without considering whether there was, in fact, a material breach, I find that the Tenant failed to provide sufficient notice to the Landlord to correct the breach. The November 15, 2022 letter gives the Landlord until November 18, 2022 to correct the issue. Three-days is not reasonable notice.

The *Act* does not contemplate circumstances in which a tenant may escape their obligations under a tenancy agreement or the *Act* where a landlord is alleged to have failed to conduct repairs at the tenant's request.

I find that the Tenant failed to give proper notice when terminating the tenancy in breach of his obligation under s. 45 of the *Act*. The Landlord states that the rental unit was re-rented on January 1, 2022 and that rent for December 2021 was unpaid due to the Tenant's breach. I find that the Tenant's breach of s. 45 resulted in a loss of rent for December 2021. I find that the Landlord mitigated his damages by finding a new tenant, who took possession of the rental unit on January 1, 2022. I find that the Landlord has made out his claim for compensation under s. 67 of the *Act* for rent due in December 2021, which under the tenancy agreement was due in the amount of \$2,100.00.

The Landlord claims the monetary loss against the security deposit. Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit,unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.
- ...
3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the *Act*;
- whether or not the landlord may have a valid monetary claim.

Presently, it is undisputed that the Tenant vacated the rental unit on November 20, 2021 and provided his forwarding address on November 28, 2021. Upon review of the information on file and consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed his application claiming against the security deposit on December 16, 2021. Therefore, I find that the Landlord failed to file his application within 15-days of receiving the Tenant's forwarding address.

As the Landlord failed to claim against the security deposit within the 15-days permitted under s. 38(1), I find that s. 38(6) applies and the Tenant is entitled to double the security deposit, which in this case is \$2,100.00 (\$1,050.00 x 2).

Conclusion

The Landlord has established a monetary claim for unpaid rent in the amount of \$2,100.00. The Landlord is entitled to that amount under s. 67 of the *Act*.

The Landlord failed to file his claim against the security deposit within the 15-days permitted under s. 38(1) of the *Act*. The doubling provision of s. 38(6) of the *Act* applies such that the Tenant is entitled double the deposit, which is \$2,100.00 (\$1,050.00 x 2).

Given the overlapping amounts in favour of both parties, I make no monetary orders as they cancel each other out. The Landlord may retain the \$1,050.00 in his possession.

I find that the Landlord had mixed success in his application. Given this, I find that he is not entitled to the return of his filing fee. I dismiss the Landlord's claim under s. 72 without leave to reapply.

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: July 22, 2022

Residential Tenancy Branch