



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL, MNDCL-S

Introduction

On December 3, 2021 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent and utilities;
- a monetary order for damage, compensation, or loss;
- an order granting authorization to retain the security deposit; and
- an order granting the return of the filing fee.

The Landlord’s Agent P.S., the Tenant, and the Tenant’s Interpreter attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord’s Application, amendment, and documentary evidence package. As such, I find these documents were sufficiently served, pursuant to Section 71 of the *Act*.

The Tenant submitted documentary evidence to the Residential Tenancy Branch, however, during the hearing, the Tenant confirmed that they did not serve a copy of their evidence to the Landlord. The Landlord’s Agent further confirmed that they did not receive any documentary evidence from the Tenant.

Preliminary Matters

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

As the Tenant did not serve a copy of their evidence to the Landlord, I find that the Tenant's evidence will not be considered in this decision. The Tenant was given an opportunity to provide oral testimony during the hearing.

The Landlord amended their Application on December 23, 2021 to include a claim for compensation relating to unpaid utilities. During the hearing, the Tenant agreed to compensate the Landlord \$1,050.00 for unpaid utilities which satisfies the Landlord's claim. The hearing continued based on the Landlord's claim for unpaid rent.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on October 15, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$2,200.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,100.00 which the Landlord continues to hold. The Landlord stated that the tenancy ended on December 15, 2021, however, the Tenant stated that he vacated the rental unit at the end of November 2021.

The Landlord testified the Tenant did not pay rent in the amount of \$2,200.00 when due on November 1, 2021. The Landlord stated that he subsequently served the Tenant a 10 Day Notice to End Tenancy for Unpaid rent. The Landlord stated that the Tenant also did not pay rent for December 2021 rent as well, before the Tenant vacated the rental unit on December 15, 2021. The Landlord referred to previous dispute resolution

hearing in which the Tenant had indicated a later end of tenancy date. As such, the Landlord is seeking \$4,400.00 in unpaid November and December 2021 rent.

The Tenant stated that he received a verbal notice on September 30, 2021 from the Landlord stating that the rental unit sold and that he would need to vacate the rental unit. The Tenant confirmed that he did not receive a Two Month Notice that it was only verbal. The Tenant claims that he vacated the rental unit at the end of November 2021 and gave the keys of the rental unit to the new owner.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

As previously noted, during the hearing, the Tenant agreed to compensate the Landlord **\$1,050.00** for unpaid utilities, which I award to the Landlord.

With respect to the Landlord's claims for unpaid rent for November and December 2021;

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

While the Tenant stated that he received verbal notice from the Landlord that the rental unit sold, I accept that the parties agreed that the Tenant did not receive a Two Month Notice to End Tenancy. As such, I find that the Tenant is not entitled to the compensations associated with the Notice. I find that the Tenant had no right to withhold November 2021 rent from the Landlord. As such, I find that the Landlord is entitled to compensation in the amount of **\$2,200.00**.

The Landlord is also claiming for unpaid December 2021 rent. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant did not vacate the rental unit at the end of November 2021. The Landlord referred to other file numbers during the hearing, however, none of those previous decision demonstrated that the

Tenant had indicated a later end of tenancy date. As such, I decline to award the Landlord compensation for loss of December 2021 rent.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent and utilities in the amount of \$3,250.00. As the Landlord was successful with their Application, I find that they are entitled to the return of the **\$100.00** filing fee. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,250.00, which has been calculated as follows:

Claim	Amount
Unpaid November 2021 rent:	\$2,200.00
Unpaid Utilities:	\$1,050.00
Filing Fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$1,100.00</i>
TOTAL:	\$2,250.00

Conclusion

The Landlord is granted a monetary order in the amount of \$2,250.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims). 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: August 05, 2022

Residential Tenancy Branch