



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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REVIEW DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

This review decision pertains to the landlord's application for an order of possession and a monetary order under the *Residential Tenancy Act* ("Act"). The landlord made their application by way of the direct request process on March 23, 2022 and obtained a decision (the "original decision"), an order of possession and a monetary order (the "original orders") on April 27, 2022. The tenant filed an application for review under section 79 of the Act and obtained a review consideration decision on May 9, 2022. The review consideration decision ordered that a new, participatory hearing of the landlord's application take place. The review consideration further ordered the original decision and original orders be suspended until the new hearing is completed.

Both parties attended the hearing on August 26, 2022. The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

It is noted that the tenant vacated the rental unit on or about April 1, 2022, and as such the issue of whether the landlord is entitled to an order of possession is now moot.

Issues

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute and explain the decision is reproduced below. As explained to the parties, my decision on the landlord's application will not consider any previous findings made in the original decision or review consideration decision.

The tenancy began October 1, 2020 and ended on March 31, 2022. Monthly rent was \$2,500.00 and the tenant paid a \$1,250.00 security deposit which the landlord currently retains in trust. A copy of the written tenancy agreement was in evidence.

The landlord seeks \$2,500.00 in compensation for unpaid rent. He testified that this is for unpaid rent for March 2022. (The landlord also has an additional claim for damages, but as both the parties and I determined, his application for compensation related to damages to the rental unit is scheduled for a hearing in mid-December 2022. The tenant's cross-application for the return of her security deposit is scheduled for the same date.)

The landlord testified that he served upon the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on February 28, 2022. A copy of the Notice was in evidence and the tenant did not dispute that Notice. The Notice stated that the tenancy would end on April 30, 2022.

On March 1, the landlord deposited the tenant's cheque for March's rent. Two days later, the cheque was returned NSF. On March 13, the landlord contacted the tenant regarding the bounced cheque and the tenant told the landlord that she would be out of the property by April 1. Regarding this last point, the landlord testified that the tenant's "notice" about leaving by April 1 was sent by text message. He argued that the tenant did not provide the proper ten-day notice as contemplated by the Act.

The above-noted text message conversation between the landlord and tenant is reproduced as follows (including grammatical and spelling errors):

Landlord:	[K] – I just saw that your cheque bounced
Tenant:	I'll be out april 1 Since your suppose to give me my last month free, just give me my damage deposit back on April 1
Landlord:	Please give me your notice in writing Email to [email redacted] You'll need to be out March 31
Tenant:	Il'l be out april 1 Since your suppose to give me my last month free, just give me my damage deposit back on April 1 [it is unclear whether this duplicate text message was sent a second time by the tenant]
Landlord:	I accept your notice to move out at the end of March

The tenant testified that as soon as she received the Notice from the landlord, she began to search for a new place for her and her child. She then found a place and let the landlord know she would be vacating the rental at the end of the month. The tenant emphasized that the landlord *did* accept her notice to move out. Ultimately, the tenant vacated the rental unit by 1 PM on March 31, 2022.

The tenant then added that the landlord “tried” or was successful in later cashing the tenant’s post-dated cheque for May 2022. By then, of course, the tenant had left the rental unit. It is the tenant’s position that she was owed the last month’s rent and thus is not liable to pay the landlord compensation for March’s rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the landlord gave the tenant a notice to end the tenancy under section 49 of the Act. The Notice given by the landlord is consistent with that section of the Act.

Section 50 of the Act states that

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [*director's orders: renovations or repairs*], the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51(1) of the Act states that “A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.”

Section 51(1.1) of the Act states that “A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.”

The starting point in my analysis is to determine whether the tenant provided her 10 days' notice in a manner than complies with the Act. I find that it does not.

While the tenant argued that the landlord “did” accept her notice by text message, and while the landlord himself admits to having “accepted her notice in good faith,” the tenant's notice did not comply with section 52 of the Act. Section 52 of the Act requires that a notice be in writing and that it must “be signed and dated by the landlord or tenant giving the notice,” that it gives the address of the rental unit, and that it state the effective date of the notice.

The tenant's notice, while I find was made “in writing”—there is little argument in this modern age that a text or email may be said to be a written format of communication—the tenant's notice was not signed in any manner nor did the notice give the address of the rental unit. Given these defects in the tenant's notice to end the tenancy early it is my finding that the notice was invalid. That the parties believed it was a valid notice (even if, in the landlord's case, until he found out otherwise) is irrelevant, as landlords and tenants may not avoid or contract out of the Act (see section 5(1) of the Act).

It is my finding that the tenant's notice was invalid, and thus the tenancy legally ended on April 30. Therefore, the tenant was legally obligated to pay rent for March 2022—which she did not—while not obligated to pay any rent for April 2022. That the tenant had already vacated the rental unit in April does not negate the simple fact that the tenancy ran until April 30, 2022. In other words, the tenant could have, but did not, avail herself of what would have been a month of free occupancy of the rental unit.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, as the tenant never ended the tenancy early in a manner that complied with section 50(1)(a) of the Act, the tenant was required to pay rent for March 2022, and has not done so. As such, pursuant to section 67 of the Act, the tenant is hereby ordered to pay to the landlord \$2,500.00 in compensation. Further, as the landlord was successful in this application, he is entitled to recover the cost of the filing fee, pursuant to section 72 of the Act, in the amount of \$100.00.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the tenancy. As such, the landlord is ordered to retain the tenant's \$1,250.00 security deposit in partial satisfaction of the amount awarded.

A monetary order for the balance (\$1,350.00) is issued in conjunction with this decision, to the landlord. The monetary order is enforceable in the Provincial Court of British Columbia.

Conclusion

For the reasons set out above, and pursuant to subsection 82(3) of the Act, the original decision is hereby confirmed.

The original monetary order is varied, and a new monetary reflecting the fact that the security deposit has been ordered retained by the landlord, is issued to the landlord.

The original order of possession is confirmed (though, as noted previously, this order is largely moot given that the tenancy has long since ended).

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 29, 2022

Residential Tenancy Branch