



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$2,600.00 for damage or compensation under the Act

The Tenant and an agent for the Landlord, A.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided their email address in the Application and confirmed it in the hearing. The Tenant provided his email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2017, and ran to June 30, 2018, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$2,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,300.00, and no pet damage deposit. They agreed that the Tenant moved out on February 1, 2021, and that the Landlord returned the Tenant's security deposit in full.

The Landlord explained the claim in his Application, as follows:

The tenant did not give proper notice to end month to month tenancy. They sent a text on a holiday after the 1st of the month saying they would be leaving at the end of the month. We did our best to advertise and try to find a tenant to mitigate the loss of rent but were only able to find a tenant for the following month leaving one month without rent.

The Landlord submitted copies of texts in which the Landlord asks the Tenant for permission to do showings of the rental unit to prospective tenants. The showings were for January 6, 13, 16 and 25, 2021. However, in the hearing, the Agent said that they did not find a new tenant to start until March 1, 2021, leaving the Landlord without rent for February 2021.

The Tenant said:

I don't know honestly what to say, because my family is a very clean family – better than when I rented it for them. [The Agent] can agree to that. All payments were done in time. During the pandemic, everything was so mixed up. To send this money all the way from Iran, it takes three days, sometimes one week, we had a lot of problems, but all in all, the rent was paid on time, and we tried to be good tenants.

To be honest, it was a technicality that this text that my daughter had sent it didn't go through. Whatever you decide. Whatever you say. When we moved to

[the other City], the unit we got is much cheaper, even because of that, everything was on time, but it's unfortunate. Whatever you decide.

The Agent said:

Personally, I feel sorry that I'm the one to do this, but it wasn't my decision, it was the owner's. In terms of evidence, I think everything uploaded shows the notice given, and I did everything to find someone beforehand.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Tenant's Notice to End Tenancy

According to section 45 (1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

- (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.

Accordingly, by giving notice of the end of the tenancy on January 1, 2021, the effective end date for this notice should have been February 28, 2021, not January 31, 2021.

Section 53 (2) of the Act states that if the effective end date of the tenant's notice to end the tenancy is earlier than what is permitted under the Act, the effective end date is deemed to be the earliest date that complies with the Act. As a result, the effective end date in this situation was February 28, 2021. The Tenant's should have given the Landlord until the end of February to find a new tenant, but the Tenant only paid rent until the end of January 2021. I find that the Landlord made best efforts to find a new tenant for February, but that they were unsuccessful until March 2021. Accordingly, I find that the Tenant owes the Landlord \$2,600.00 in rent for February 2021.

I, therefore, **award the Landlord with \$2,600.00** from the Tenant for this Application, pursuant to sections 45, 53, and 67 of the Act.

Conclusion

The Landlord is successful in his Application for compensation from the Tenants for unpaid rent, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities for this claim.

I grant the Landlord a **Monetary Order** from the Tenant of **\$2,600.00** for unpaid rent in February 2021. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 06, 2022

Residential Tenancy Branch