



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNRL FFL

Introduction

The landlord seeks compensation through the *Residential Tenancy Act* (the “Act”).

A dispute resolution hearing was convened by teleconference on October 25, 2022. Only the landlord attended the hearing, and he was affirmed.

The landlord testified under oath that he served the *Notice of Dispute Resolution Proceeding* on the tenant by way of email on or about March 12, 2022. Submitted into evidence was a copy of a text message conversation wherein the tenant accepts service of documents related to the tenancy by email.

Based on this undisputed, affirmed evidence it is my finding that the tenant was served the *Notice of Dispute Resolution Proceeding* in compliance with the Act and that he had the opportunity to participate in the dispute resolution process and attend the hearing.

Issues

1. Is the landlord entitled to compensation for lost rent?
2. Is the landlord entitled to compensation to pay for the filing fee?

Background and Evidence

The tenancy was a fixed-term tenancy that began April 1, 2021 and was supposed to end on October 31, 2021. Monthly rent was \$690.00 for each of April and May, and then \$350.00 for each of the remaining months. There is a \$345.00 security deposit in trust. A copy of the non-standard written tenancy agreement was in evidence.

The tenant moved out of the rental unit before the end of the tenancy and did not provide sufficient notice to end the tenancy. The tenancy is considered ended on June 29, 2021. And the landlord lost \$1,400.00 in rent that would have been paid by the tenant had the tenant honoured the tenancy agreement until the end of the tenancy.

There is documentary evidence before me to find that the landlord made reasonable efforts to minimize his loss by searching for a new tenant but was ultimately unsuccessful in doing so.

Analysis

The standard of proof in this type of legal dispute is that of 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.

A. Claim for Compensation for Loss of Rent

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

A fixed-term tenancy can only be ended by the tenant at the end of the term (section 45(2) of the Act) or by mutual written agreement of the parties (section 44(1)(c) of the Act). In this case the tenant simply moved out, without any notice, thereby terminating the tenancy in breach of the Act. But for the tenant's breach of the tenancy agreement the landlord would not have suffered a loss of \$1,400.00. This amount is established by the rent as set out in the tenancy agreement. And the landlord did what was reasonable in minimizing their loss. Given all of these undisputed facts it is my finding that the landlord is entitled to compensation for the loss suffered in the amount of \$1,400.00.

B. Claim for Recovery of the Application Filing Fee

The landlord is entitled to recover the cost of the \$100.00 filing fee pursuant to section 72 of the Act.

C. Summary of Award, Retention of Security Deposit, and Monetary Order

The landlord is awarded \$1,500.00.

Pursuant to section 38(4)(b) of the Act the landlord is ordered to retain the \$345.00 security deposit in partial satisfaction of the award. The tenant is hereby ordered, pursuant to section 67 of the Act, to pay to the landlord \$1,155.00.

A monetary order is issued to the landlord, and the order is enforceable in the Provincial Court of British Columbia (Small Claims Court) should the tenant not pay the landlord the above-ordered amount within 15 days of receiving this decision.

Conclusion

The landlord's application is hereby granted.

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

Dated: October 26, 2022

Residential Tenancy Branch