



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 13, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant K.D. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed having received the Landlord's Application and documentary evidence package. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Tenant submitted evidence to the Tenancy Branch, however, the Tenant stated that they did not serve a copy of their evidence to the Landlord.

Preliminary Matters

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as

soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the Tenant did not serve their evidence to the Landlord, I find that I can not consider the Tenant's evidence as it would prejudice the Landlord, given they were not aware of the existence of the Tenant's evidence and have not had the opportunity to review, consider, and respond to the evidence during the hearing.

The parties were given an 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.

Issue(s) 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 an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the fixed term tenancy began on August 26, 2021 and was meant to continue until August 26, 2022. During the tenancy, the Tenants were required to pay rent in the amount of \$1,900.00 which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00 which the Landlord continues to hold. The tenancy ended early on March 5, 2022.

The Landlord is seeking compensation in the amount of \$950.00 relating to loss of rent. The Landlord stated that the Tenants vacated the rental unit on March 5, 2022 without providing any written notice to end tenancy to the Landlord. The Landlord stated that the Tenants did not pay rent for March 2022.

The Tenant stated that the parties had discussed a possible mutual agreement to end tenancy after receiving a noise complaint. The Tenant stated that they prepared a mutual agreement to end tenancy and posted it to the Landlord's door on February 28,

2022. The Landlord confirmed having received the Mutual Agreement from the Tenants, which had an effective date of March 5, 2022. The Landlord stated that they did not agree to this move out date, therefore, did not sign the mutual agreement to end tenancy.

If successful, the Landlord is also seeking the return of the \$100.00 filing fee.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

According to Section 45 of the Act, 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.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

According to Section 55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.**

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I accept that the parties had discussed potentially mutually ending the tenancy. While the Tenants prepared a mutual agreement to end tenancy, I find that the Landlord did not sign the agreement nor did they agree in writing that the tenancy has ended. As such, I find that the Tenants were not entitled to end the fixed term tenancy early and failed to pay March 2022 rent when due to the Landlord.

I find that the Landlord has suffered a loss of rent as a result of the Tenants breaking the fixed term tenancy early. I find that the Landlord is entitled to compensation in the amount of **\$950.00** as requested. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to 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 \$100.00, which has been calculated as follows:

Claim	Amount
Loss of rent:	\$950.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-\$950.00
TOTAL:	\$100.00

Conclusion

The Landlord is granted a monetary order in the amount of \$100.00. The monetary order should be served to the Tenants 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: November 10, 2022

Residential Tenancy Branch