



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award, and to recover the cost of the filing fee.

The landlord, the landlord's agent/daughter (agent/JZ), and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenants confirmed receipt of the landlord's evidence. The tenants did not file evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant, RZ, listed on the landlord's application is the 14 year old child of the tenant, LD. I find it appropriate to remove RZ from any consideration for financial obligations in this dispute. For any orders issued in this matter, RZ's name will not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to retain the tenant's security deposit to partially satisfy a monetary award, and to recover the cost of the filing fee?

Background and Evidence

According to the written tenancy agreement filed in evidence, this tenancy began on November 1, 2022, for a fixed term through October 31, 2023, monthly rent for the rental unit was of \$1,900.

The tenant paid a security deposit of \$950, and the landlord retained the tenant's security deposit, having made this claim against it.

The landlord submitted that on December 23, 2022, they received the formal move-out notice from the tenant, indicating they were moving out on January 31, 2023. The tenants moved out on January 30, 2023, according to the landlord.

The landlord's original monetary claim was \$6,897 for loss of rent revenue of \$5,700 from February through April 2023, and a rental agent service fee.

The landlord then filed an amended application containing a reduced monetary claim. The landlord submitted that they found new tenants for March 15, 2023, and as a result, they are now only seeking \$2,850 for loss of rent. Included in the amended monetary claim was 50% of the monthly rent of \$950 paid to a placement service, the filing fee of \$100, and \$13.60 for document service, for a total of \$3,913.60.

Additional evidence filed by the landlord included a tenancy agreement for the new tenants, showing a start date of March 15, 2023, an online advertisement for the rental unit posted on December 23, 2022, a contract with a property management company signed on January 24, 2023, communication with the tenant about the impact of breaking a fixed-term tenancy agreement early, and a monetary order worksheet.

The landlord submitted that they spent time and money to find a new tenant and they are entitled to the monetary compensation requested due to the loss of rent revenue.

The tenant's agent said that the rental unit was always cold, and the landlord never addressed the issue.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Loss of rent revenue

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on October 31, 2023.

In the case before me, I accept that the tenant provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term as they gave notice and vacated the rental unit on January 30, 2023.

I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find it reasonable that the landlord would be unable to find a new tenant immediately, but I find that they took reasonable and diligent steps to minimize their loss as new tenants were secured for March 15, 2023. I therefore find the landlord submitted sufficient evidence to support their claim for loss of rent revenue for February and March 1-15, 2023. I therefore find they have established a monetary claim of **\$2,850** (\$1,900 for February and \$950 for March 1-15, 2023).

Placement service fee

While the written tenancy agreement requires the tenant to pay an administration fee in the event the tenant ended the fixed-term early, the landlord used the term, placement

service fee in their application to describe their claim. There is nothing in the tenancy agreement requiring the tenant to pay a placement service fee.

If the landlord's attempt was to charge the tenant an administration fee under the tenancy agreement, I find the only administration fee allowed to be charged to a tenant under the Act and Residential Tenancy Regulations 7(1)(d) is a fee of \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Apart from that, an administration fee or a placement service fee is not an allowed fee a landlord may charge a tenant under the Act and Regulations. Parties are not allowed to contract outside of the Act.

Apart from that, I find it unreasonable that the landlord required the tenant to pay an undetermined amount to be decided by the landlord at the end of the tenancy. As I find the administrative fee to be an undetermined amount set by the landlord at the beginning of the tenancy, I find the fee represents a penalty and not a genuine pre-estimate of a loss.

I therefore, **dismiss** the landlord's claim for \$950, **without leave to reapply**.

As to the landlord's claim for document delivery fee, the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore **dismiss** the landlord's claim for \$13.60, **without leave to reapply**.

I grant the landlord recovery of their filing fee of \$100, due to their partially successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord a monetary award of **\$2,950**, comprised of loss of rent revenue for February and March 1-15, 2023 in the amount of \$2,850 and the filing fee of \$100.00.

At the landlord's request, I direct them to retain the tenant's security deposit of \$950 in partial satisfaction of their monetary award of \$2,950.

I grant the landlord a monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2,000.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is partially granted in the above terms, they have been authorized to retain the tenant's security deposit of \$950 and they have been awarded a monetary order for the balance due, in the amount of \$2,000.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 22, 2023

Residential Tenancy Branch