



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, G.S., and the Tenant, E.V.S., attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that he served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on November 24, 2022 by Canada Post registered mail (NoDRP package). The Landlord confirmed receipt of the NoDRP package. I find that the Landlords were deemed served with the NoDRP package five days after mailing them, on November 29, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 12, 2004. The fixed term ended on October 11, 2005, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,370.00 payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy. The Landlords returned both deposits and interest to the Tenant totalling \$1,138.95 in August 2020.

The Landlords' served the Tenant with a 4 Months' Notice on March 26, 2020 by attaching the notice on the Tenant's door.

By October 1, 2020, the Tenant had not vacated the rental unit. The Landlords imposed section 4 of their tenancy agreement which stated:

Whenever the tenancy is terminated, the Landlord shall be entitled to possession by 1:00 pm on the date of termination. Failure to give up possession will result in a service charge of \$50.00 per day thereof in addition to any other liability the Landlord may incur including loss of revenue.

The Tenant vacated the rental unit on November 7, 2020.

The Tenant testified that he did not receive one month's rent payable under the tenancy agreement as required when issued a 4 Months' Notice. The Tenant calculated his monthly rent amount using the amount he paid according to section 4 of the tenancy agreement. The Tenant seeks \$1,520.83 compensation as his one month rent amount under the tenancy agreement.

Landlord G.S. confirmed that they did not provide one month's rent compensation to the Tenant at the end of his tenancy.

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.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant claimed \$1,520.83 for one month's rent compensation after receiving a 4 Months' Notice from the Landlords. Landlord G.S. confirmed that they did not compensate the Tenant after he vacated further to receiving their 4 Months' Notice.

I find the Landlords owe the Tenant one month's rent payable under the tenancy agreement as directed under section 51(1) of the Act. I find section 4 of the tenancy agreement was the Landlord's way of contracting out of the Act which is not permissible. The rent amount under the tenancy agreement at the end of the tenancy was \$1,370.00.

I grant the Tenant \$1,370.00 compensation which represents one month's rent payable under the tenancy agreement.

As the Tenant is successful in their claim, they are entitled to recovery of the application filing fee. The Tenant's monetary award totals \$1,470.00 (\$1,370.00 + \$100.00).

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$1,470.00. The Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 15, 2023

Residential Tenancy Branch