



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR / MNRL-S, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the Residential Tenancy Act (the Act), which were crossed to be heard simultaneously.

The Tenant seeks the following:

- An order for the Landlords to return the security deposit under section 38 of the Act.

The Landlords seek the following:

- A monetary order for unpaid rent under sections 26 and 67 of the Act;
- Authorization to retain the security deposit under section 38 of the Act; and
- Authorization to recover the filing fee for this Application under section 72 of the Act.

The Landlords testified they served the Notice of Dispute Resolution Proceeding Package (Materials) to the Tenant via registered mail on April 28, 2023. The Tenant confirmed receipt and raised no issues with service of the Materials. Given this, I find that in accordance with sections 89 and 90 of the Act that the Landlords' Materials were sufficiently served to the Tenant.

The Tenant testified they served their Application Materials on the Landlords via registered mail, though they did not know the date this was done. They said they filled out the form as required and sent it to the Landlords. The Landlords testified they did

not receive any of the Materials from the Tenant and that the only document they received was two pages of forms completed by the Tenant.

I find the Tenant did not submit into evidence any Proof of Service forms, though they did provide a Canada Post registered mail receipt and tracking number. The tracking number is included on the front page of this Decision. The date on the receipt is not visible, though a search of the tracking number of the Canada Post website indicates the item was sent on March 29, 2023 and received on April 3, 2023.

I find that the Tenant was provided with the Materials by the Residential Tenancy Branch on April 5, 2023, so could not have served them to the Landlords on March 29, 2023.

Considering the above, and the vague testimony of the Tenant regarding the issue of service, I find the Tenant did not serve the Landlords with the Materials in accordance with section 89 of the Act.

Rule of Procedure 3.1 states an applicant must serve the respondent with their Materials within 3 days of them being made available by the Residential Tenancy Branch.

Given I find the Tenant did not serve their Materials on the Landlord, and as the subject of the Tenant's Application, the return of the security deposit, will be determined as part of the Landlords' Application, I dismiss without leave to reapply the Tenant's Application.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for unpaid rent?
2. Are the Landlords entitled to retain all, or part of the security deposit?
3. Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on November 1, 2022 on a month-to-month basis.
- Rent was \$1,700.00 per month due on the first day of the month.
- A security deposit of \$850.00 was paid by the Tenant which the Landlords still hold.
- There was no written tenancy agreement, and the parties only had a verbal agreement.
- The Tenant vacated the rental unit on February 1, 2023.

The Landlords testified as follows. They seek compensation of \$1,700.00 as payment for rent due from the Tenant for the month of February 2023. The Tenant gave them notice verbally and via text message on January 20, 2023 that they would be vacating the rental unit on January 30, 2023.

They seek the rent due under the full one month notice period. They attempted to rent the rental unit again once the Tenant had vacated, but were unable to do so until May 20, 2023.

They received the Tenants new address by text message on February 7, 2023. They sent a text message to the Tenant asking for their forwarding address in writing, raised the issue of the required notice period and sent a link to the Residential Tenancy Branch website with further information. In early April 2023, they received the Tenant's forwarding address in writing via registered mail.

Condition inspections of the rental unit were carried out, but as there were no issues, no reports were prepared.

The Tenant testified as follows. During the tenancy, they were having issues finding work in the region, leading to a dire financial situation. As a result, they had to relocate and give the Landlords short notice to leave the rental unit, though they were unsure of the precise date this was done. This notice was given to the Landlords via text message.

They sent the Landlords their new address via text message on February 7, 2023, and in writing via registered mail though they were not certain of the date.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act, *Residential Tenancy Regulation* (Regulation) or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 45 of the Act sets out that a tenant may end a month-to-month tenancy on a date not earlier than a month after the landlord receives the notice to end tenancy, and is effective the day before rent is due under the tenancy agreement. Section 45(4) of the Act also confirms the tenant's notice to end tenancy must comply with the form and content requirements set out in section 52 of the Act.

Having considered the testimony of both parties and evidence before me, I find the parties entered into a month-to-month tenancy where rent was due on the first day of the month. Though there was no written tenancy agreement, section 1 of the Act confirms a "tenancy agreement" means an agreement either written or oral, express or implied, so it is therefore possible to have an unwritten tenancy agreement.

I find the Tenant gave notice to end the tenancy on January 20, 2023, effective January 30, 2023, though they did not vacate the rental unit until February 1, 2023. Whilst nothing before me indicated the tenant's notice complied with the form and content requirements of section 52 of the Act, it was nevertheless accepted by the Landlords that the Tenant would be vacating the rental unit.

However, I find the effective date of Tenant's notice was premature, and I find on a balance of probabilities the Landlords notified the Tenant of this and did not accept an end to tenancy on January 30, 2023. Per section 45(1) of the Act, the earliest effective date the Tenant could have given to end the tenancy was February 28, 2023.

Section 26 of the Act requires a tenant to pay rent when it is due, whether or not the landlord has complied with the Act, Regulation, or tenancy agreement.

Given the above findings, I conclude the Tenant was not able to end the tenancy effective January 30, 2023 under the Act and was therefore obligated to pay rent of \$1,700.00 to the Landlord on February 1, 2023, per the tenancy agreement. Whilst I have sympathy for the Tenant and their reasons for vacating the rental unit, the Act does not allow me to consider these as valid reasons for ending the tenancy early.

I accept the Landlords' testimony they attempted to re-rent the rental unit at short notice and were unable to do so. Given this, I find the Landlords took steps to mitigate their loss and are entitled to a monetary award of \$1,700.00 for the rent due February 1, 2023.

Are the Landlords entitled to retain all, or part of the security deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days of the tenancy ending and receiving the Tenant's forwarding address in writing, whichever is later.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find on a balance of probabilities that the Tenant provided their forwarding address in writing and the Landlords received this in early April 2023. Though the Tenant testified they sent their forwarding address via text message on February 7, 2023, as a copy

was not submitted into evidence by either party, and the Landlords requested the address in writing, I find the text message was not accepted written communication between the parties.

As the Landlords made their Application on April 13, 2023 I find they have complied with 15 day timeframe set out in section 38(1) of the Act and the doubling provisions of section 38(6) of the Act do not apply.

As I have granted the Landlords a monetary award, in accordance with the offsetting provision of section 72 of the Act, I authorize the Landlords to retain the Tenant's security deposit of \$850.00 and the applicable interest as partial satisfaction of the payment order.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated using the Residential Tenancy Branch interest calculator using today's date.

Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

As the Landlords have been successful in their Application, I order the Tenant to pay the Landlords the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlords' Application is granted.

The Landlords are authorized to retain the security deposit.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlords' obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The Order is summarized below.

Item	Amount
Compensation for unpaid rent	\$1,700.00
Filing fee	\$100.00
Less: security deposit and interest	(\$862.31)
Total	\$937.69

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: September 28, 2023

Residential Tenancy Branch