



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDS-DR, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The landlord filed an Application for Dispute Resolution, in which the landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The landlord's Application for Dispute Resolution names the landlord with the initials "BC" as the Applicant. Any Monetary Order awarded to the landlord will only name BC.

The tenant filed an Application for Dispute Resolution, in which the tenant applied to recover the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The tenant's Application for Dispute Resolution names the parties with the initials "BC" and "NC" as the Respondent. Any Monetary Order awarded to the tenant will name BC and NC.

NC stated that on February 24, 2023, the Dispute Resolution Package and the evidence the landlord submitted to the Residential Tenancy Branch in February of 2023 were sent to the tenant, via registered mail. The tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The tenant with the initials “MK” state that the tenant’s Dispute Resolution Package was served to the landlord, via registered mail, on February 23, 2023. The landlord acknowledged receipt of these documents.

On March 13, 2023 and April 05, 2023, the tenant submitted evidence to the Residential Tenancy Branch. MK stated that all of this evidence was served to the landlord, via registered mail, sometime during the first week of March of 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter

On March 24, 2023 the landlord filed an Amendment to an Application for Dispute Resolution, in which the landlord amended the address of the rental unit on the landlord’s Application for Dispute Resolution, to reflect it is the basement unit. NC stated that this Amendment was mailed to the tenant, although she does not recall when it was mailed. MK stated that he does not know if he received this Amendment.

Regardless of whether the tenant was served with the Amendment to an Application for Dispute Resolution, I find it reasonable to amend the Application for Dispute Resolution at the hearing to reflect the correct address of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and to keep all or part of the security deposit?

Is the tenant entitled to the return of the security deposit?

Is either party entitled to recover the fee paid to file an Application for Dispute Resolution?

Background and Evidence

NC and MK agree that:

- the tenancy began on August 01, 2021;
- a condition inspection report was completed at the beginning of the tenancy;
- the Tenant agreed to pay monthly rent by the first day of each month;
- at the end of the tenancy, the monthly rent was \$1,050.00;
- the Tenant paid a security deposit of \$500.00 on July 14, 2021;
- the tenant only paid \$525.00 in rent for February of 2023;
- on January 18, 2023, the tenant sent NC a text message in which he informed her he would be vacating the unit on February 01, 2023;
- the rental unit was vacated on February 11, 2023;
- a condition inspection report was completed at the end of the tenancy; and
- a forwarding address for the tenant was provided, in writing, on February 17, 2023.

The landlord filed the landlord's Application for Dispute Resolution on February 19, 2023, which is 2 days after the tenant's forwarding address was received.

MK stated that on January 19, 2023 he posted a notice on the landlord's door, in which he informed the landlord that he would be vacating the unit on February 01, 2023. NC stated that on January 19, 2023 the landlord received notice from the tenant that he would be vacating the unit on February 15, 2023.

The Landlord is seeking compensation of \$525.00 for the remainder of the rent that was due on February 01, 2023.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of

proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

On the basis of the undisputed evidence, I find that the landlord and the tenant have a tenancy agreement which requires the tenant to pay rent of \$1,050.00 by the first day of each month.

Section 45(1) of the *Residential Tenancy Act (Act)* permits a tenant to end a periodic 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, and (b) 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.

On the basis of the undisputed evidence, I find that the on January 19, 2023 the tenant posted a notice of the landlord's door, which informed the landlord that he would be vacating the unit. I find that it is not relevant whether this notice declared that he would be vacating on February 01, 2023, as MK declares or on February 15, 2023, as NC declares. The tenant did not have the right to end the tenancy on February 01, 2023 or February 15, 2023. As rent was due by the first day of each month, any notice to end the tenancy given by the tenant would need to end the tenancy on the last day of the month.

I find that the tenant's notice to end the tenancy did not comply with section 45(1) of the Act, as it did not provide one full month's notice. To end this tenancy on February 28, 2023, in accordance with section 45(1) of the Act, the tenant would have to provide written notice to end the tenancy on, or before, January 31, 2023.

Section 53 of the Act stipulates, in part, that if a tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the Act, the effective date is deemed to be the earliest date that complies with the section. I find that the effective date of the notice given by the tenant on January 19, 2023 is deemed to be February 28, 2023.

Section 26 of the Act requires tenants to pay rent when it was due. As the tenancy had not been properly ended on February 01, 2023, I find that the tenant was required to pay all of the rent that was due on February 01, 2023. On the basis of the undisputed

evidence, I find that the tenant only paid \$525.00 in rent for February of 2023 and that he therefore still owes the landlord \$525.00 in rent for that month.

Section 72(2)(b) of the Act stipulates that if the director orders a tenant to pay money to a landlord, the amount may be deducted from any security deposit or pet damage paid by the tenant. As I have concluded that the tenant owes the landlord \$525.00 in rent, I authorize the landlord to retain the security deposit of \$500.00 in partial satisfaction of that claim.

As I have granted the landlord authority to retain the tenant's security deposit, I dismiss the tenant's application to recover the deposit.

I find that the landlord's Application for Dispute Resolution has merit and that the landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the tenant has failed to establish the merit of the tenant's Application for Dispute Resolution and I dismiss the tenant's claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The landlord has established a monetary claim, in the amount of \$150.00, which includes the \$25.00 in outstanding rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. This monetary claim must be reduced by interest due to the tenant from the security deposit, which is \$8.31.

Based on these determinations I grant the landlord a monetary Order for the balance \$116.69. In the event the tenant does not voluntarily comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: November 06, 2023

Residential Tenancy Branch