



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL / MNSDS-DR

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 Landlord seeks the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- Authorization to retain the Tenant's security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks the following:

- A Monetary Order for the return of their security deposit under sections 38 and 67 of the Act.

Service of Notice of Dispute Resolution Proceeding Package and Evidence

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the other's Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Landlord authorized to retain the Tenant's security deposit, or is the Tenant entitled to the return of their security deposit?
3. Is the Landlord entitled to recover the filing fee for their 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 parties signed a written "sublease agreement" on or around October 11, 2022, which was entered into evidence.
- Under the agreement, the tenancy was set to commence on November 1, 2022 for a fixed term ending December 1, 2022 and continuing on a month to month basis thereafter.
- Rent was \$550.00 per month due on the first day of the month under the agreement.
- A security deposit of \$275.00 was paid by the Tenant on October 11, 2022 which the Landlord still holds.
- The Tenant never occupied the rental unit.

The Landlord testified as follows. The rental unit is one of four rooms in a house. The Landlord subleases the rooms and is responsible for paying rent for the entire residential property to the owner. The Landlord acts as a property manager and does not reside at the residential property.

The Landlord and Tenant signed the written sublease agreement around October 15, 2022, with the tenancy set to start on November 1, 2022. Before November 1, 2022 the Tenant said they would not be moving into the rental unit as they would be moving to Toronto.

The Landlord tried to find a new tenant to occupy the rental unit but there was not enough time to do this by November 1, 2022. They advertised on Facebook and ultimately were able to find a new tenant by December 1, 2022 or January 1, 2023.

The Landlord argued that under the written agreement, the Tenant was required to provide a month's notice and they did not fulfill their contract. At a previous Residential Tenancy Branch hearing involving the parties, the Landlord said they would accept just keeping the security deposit as a resolution to the matter, but since the Tenant did not accept this, they seek compensation of one month's rent of \$550.00.

The Tenant testified as follows. They met the Landlord in person on October 11, 2022, then signed the written agreement and paid the security deposit of \$275.00 on the same day.

Due to personal reasons, they could not move into the rental unit and let the Landlord know this via both email and WhatsApp on October 15, 2022. Copies of this correspondence was entered into evidence.

The Tenant stated they seek the return of double the security deposit the Landlord is withholding it without cause as they never occupied the rental unit.

The Tenant stated they provided their forwarding address in writing to the Landlord on October 15, 2022 via email and that a copy of this email was submitted into evidence. I reviewed the only email dated October 15, 2022 entered into evidence and discussed with the Tenant the issue that email did not appear to contain their forwarding address. I noted their previous application for the return of the security deposit was dismissed with leave to reapply as the arbitrator found the forwarding address had not been provided at the time of the hearing on March 28, 2023.

The Tenant then testified they served their forwarding address in writing to the Landlord on April 19, 2023 via email and that the parties had agree to serve each other via email.

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.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

As set out in section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the testimony of both parties and the evidence before me, I find the parties entered into a written agreement on October 11, 2022 which required the Tenant to pay rent of \$550.00 per month to the Landlord, starting November 1, 2022 for a fixed term of one month, ending December 1, 2022 and continuing on a month to month basis after that. I find that by both parties signing the agreement and the Tenant paying the security deposit to the Landlord, the agreement was entered into. I find the Tenant then informed the Landlord on October 15, 2022 they would not be occupying the rental unit.

Given that the tenancy was for a fixed term of one month, I find the Tenant was not entitled to end the tenancy prior to December 1, 2022 and was required to give notice of at least a month, per section 45 of the Act. Therefore, the Tenant was obligated under the agreement to pay rent of \$550.00 due on November 1, 2022, which I find the Tenant did not do, so was in breach of section 26 of the Act. The Tenant never occupying the rental unit is of no relevance, given the provisions of section 16 of the Act set out above.

I accept the Landlord's testimony they tried to find a new tenant to occupy the rental unit and were unable to do so. I found the Landlord's testimony to be credible and plausible, given the Tenant notified them they would not be moving in relatively close to November 1, 2022. Given this, I find the Landlord has complied with section 7(2) of the Act and taken reasonable steps to mitigate their loss.

Given the above, I find the Landlord has established on a balance of probabilities they are entitled to a monetary award of \$550.00 for unpaid rent and grant their Application under sections 26 and 67 of the Act.

Is the Landlord authorized to retain the Tenant's security deposit, or is the Tenant entitled to the return of their security deposit?

Section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

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.

Based on the testimony of both parties and the evidence before me, I find that the Tenant's forwarding address was provided in writing to the Landlord on April 19, 2023 via email. Though the Tenant initially testified they provided their forwarding address via email on October 15, 2022, I find the email entered into evidence by the Tenant omits their forwarding address. I note this issue was raised in the previous hearing involving the parties, which took place on March 28, 2023, and the arbitrator found the Tenant had not served their forwarding address at that time. I note the parties agreed to serve documents via email at the previous hearing and the email dated April 19, 2023 sent to the Landlord by the Tenant clearly shows their forwarding address.

Given the above, I make an order under section 71(2)(b) that the Tenant's forwarding address was served to the Landlord on April 19, 2023 and was deemed received on April 22, 2023, the third day after it was emailed in accordance with section 44 of the Regulation.

As the Landlord made their Application on April 27, 2023, I find that the Landlord made their application within the 15 day period as stipulated by section 38(1) of the Act, and the Tenant is therefore not entitled to the return of double the amount of the security deposit.

Given I have made a payment order in favour of the Landlord under sections 26 and 67 of the Act, as stated earlier in this Decision, I grant the Landlord's Application and authorize the Landlord to retain the Tenant's security deposit, plus interest, in partial satisfaction of the payment order under section 72(2)(b) of the Act. The Tenant's Application for the return of the security deposit is dismissed without leave to reapply.

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.

Is the Landlord entitled to recover the filing fee for their Application from the Tenant?

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

Conclusion

The Landlord's Application is granted.

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

The Landlord is 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 Landlord's 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
Unpaid rent under sections 26 and 67 of the Act	\$550.00
Filing fee	\$100.00
Less: security deposit, plus interest	(\$279.80)
Total	\$370.20

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 22, 2023

Residential Tenancy Branch