



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties that were combined as a cross-application. The parties are seeking remedy under the *Residential Tenancy Act* (Act) as follows:

Landlord

- \$3,400 for unpaid rent
- \$100 filing fee

Tenant

- \$20,400 without a monetary breakdown to be addressed below
- \$100 filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Matters

The Tenant was advised that their entire application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act* (Act), as their application for dispute resolution did not provide sufficient particulars as is required by section 59(2)(b) of the Act. The Tenant has liberty to reapply as a result but are reminded to include full particulars of their claim when submitting their application in the “Details of Dispute” section of the application. Furthermore, when seeking monetary compensation, they applicants are encouraged to use the “Monetary Order Worksheet”, Form RTB-37 (MOW) available on the Residential Tenancy Branch website. The amount listed on the

MOW being claimed should also match the monetary amount being claimed on the application. Given the above, the filing fee for the Tenant is not granted.

The hearing proceeded with consideration of the Landlord's claim only.

The parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties as a result.

Issues to be Decided

Is the Landlord entitled to a monetary order, and if so, in what amount?

Should the Landlord be granted the filing fee?

Background and Evidence

The tenancy began on July 1, 2021. Monthly rent in the amount of \$1,700 was due on the first day of each month. The agent stated that the security deposit has already been returned to the Tenant, which the Tenant did not deny during the hearing.

The Landlord has claimed \$3,400 for unpaid rent for July 2023 of \$1,700 and loss of \$1,700 for August 2023. The agent stated that the Tenant provided their written notice via email dated July 1, 2023, that they were vacating immediately as follows:

Notice to end Tenancy, immediately!

No kitchen for over 2 weeks. You are forcing us to have to move!

I'm dealing with the hell you have caused us at the moment and I don't have the time to go into details, but over the next couple of days when I can gather my thoughts I will be sending a follow-up email explaining our experience and what led to us having no other option but to move.

Use this email as the official notice, in Junction with the follow-up email as my full notice to end Tenancy.

We have made arrangements elsewhere and your unit will be available for your son to move into after the long weekend. I will contact you for the keys and my damage deposit. You can choose to return my last month rent.

Either way we will be seeking compensation. You decide.

The Tenant confirmed that they sent the above-noted email.

The Tenant did not dispute that they failed to pay July 2023 rent, which was due on July 1, 2023.

The agent confirmed that the Landlord did not end up re-renting the rental unit and instead the agent's brother moved into the home.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what is reasonable to minimize the damage or losses that were incurred.

I find the Landlord has met the burden of proof and I find that the Tenant breached section 26 of the Act, which required rent to be paid on July 1, 2023, whether or not the Landlord complies with the Act, Regulations or tenancy agreement. In addition, I find the Tenant breached section 45(1) of the Act, as the earliest the July 1, 2023 notice would have been effective would have been August 31, 2023. However, as the agent's brother moved into the home, I do not grant loss of August 2023 rent as I find there is no loss for that month.

I grant the Landlord \$1,700 for unpaid July 2023 rent of \$1,700.

As the Landlord's claim was partially successful, I grant the **\$100** filing fee pursuant to section 72 of the Act.

Given the above, I find the Landlord has established a total monetary claim of **\$1,800** described above.

I dismiss any higher amount due to insufficient evidence.

Conclusion

The Landlord's application was partly successful.

The Landlord has been granted a monetary order for the balance owing by the Tenant to the Landlord of \$1,800.

Should the Tenant fail to pay that amount, the Landlord must serve the monetary order on the Tenant with a demand for payment letter. Then the Landlord may enforce the monetary order as an order of the Provincial Court of British Columbia, Small Claims Division.

The Tenant is reminded that they may be held responsible for the costs related to enforcing the monetary order including court fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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*.

Dated: January 12, 2024

Residential Tenancy Branch