



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PLAN A REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, and the landlord does not oppose the tenant's late evidence. Therefore, all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late payment of rent fees?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2023 and reverted to a month-to-month tenancy after June 30, 2023, which ultimately ended on October 31, 2023. Rent in the amount of \$3,200.00 was payable on the 1st day of each month. On March 23, 2023 the landlord collected a security deposit from the tenant in the amount of \$1,600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and a copy of the tenancy agreement has been provided for this hearing.

The parties signed an Address for Service document on March 23, 2023, wherein they agreed that documents may be provided to each other by email and a copy has been provided for this hearing. The tenant gave notice to end the tenancy by email, to an email address of the landlord that is not on the form, on September 30, 2023, but it was not received until October 2, 2023. The notice is effective October 31, 2023, and the tenancy ended on that date. The landlord's agent testified that documents served by email are deemed to have been served on 3 days.

As soon as the landlord received the tenant's notice, the landlord advertised the rental unit for rent, but copies of advertisements have not been provided for this hearing. The landlord received a letter from the tenant's lawyer and replied that the rental unit had not been re-rented for November 1, 2023. The landlord entered into a new tenancy agreement on November 12, 2023 for a new tenant which was effective December 1, 2023.

The landlord did not receive 1 month's notice to end the tenancy and the landlord claims \$3,200.00 for November, 2023 rent.

A copy of a Tenant Ledger has also been provided for this hearing showing the late payment fees of \$25.00 on September 2 and another on October 2, 2023, and the landlord claims late fees of \$50.00 as well as recovery of the filing fee.

The tenant testified that the email was sent on September 29, 2023 at 10:09 a.m., not the 30th. The tenant sent the notice by email to the landlord's email address that the tenant has communicated with since the beginning of the tenancy.

The tenant does not believe that 2 days is late notice to end the tenancy. The tenant offered to pay for 2 extra days, but to take the full security deposit was very egregious.

Further, the tenant didn't get any proof that the rental unit was re-rented. During the inspection at move-out the landlord said it would be re-rented "next month." There were 6 visits from prospective tenants and the tenant was told that the unit had been re-rented and cleaners would be attending for a new tenant to move in.

The tenant received a letter from the landlord asking to keep the security deposit for late fees, or the landlord will go to the Residential Tenancy Branch and ask for a full month's rent.

SUBMISSIONS OF THE LANDLORD'S AGENT:

All evidence proves the landlord's case. The landlord has done everything according to the *Act*. With respect to the tenant's statement about cleaners, the landlord manages 400 units with 25 or 30 move-ins or outs each month. The tenant is incorrect that it was re-rented for November 1, 2023.

SUBMISSIONS OF THE TENANT:

The tenant has not provided a tenancy agreement of a new tenant, and there is no proof that the landlord suffered damages. There is no evidence of loss of rental revenue.

Analysis

The landlord is correct, that documents served by email are deemed to have been served 3 days after they were sent. A tenant is required to give at least 1 month's notice to vacate a rental unit, which the landlord must receive prior to the date rent is payable under the tenancy agreement. I agree with the tenant's testimony that it was sent on September 29, 2023 which is deemed to have been served on October 2, 2023. Rent was due on the 1st day of the month.

I refer to Residential Tenancy Policy Guideline 3 – Claims for Rent and Damages for Loss of Rent, which states, in part:

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

Even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued.

In this case, the landlord's agent testified that as soon as the landlord received the tenant's notice to end the tenancy the landlord advertised it for rent. There is no supporting evidence of that, however the tenant testified that it was shown to 6 prospective renters when the tenant lived there.

In the circumstances, I find that the tenant was obligated by law to provide the notice to end the tenancy earlier, or pay the rent for the month of November, 2023, and the landlord is entitled to \$3,200.00.

I have also reviewed the tenant ledger provided by the landlord, and I accept the undisputed testimony of the landlord's agent that 2 late payment fees of \$25.00 each remain unpaid. The Addendum to the tenancy agreement specifies a late fee of \$25.00 if rent is paid late, and I find that the landlord is entitled to recover \$50.00 for late fees.

With respect to the security deposit, the law requires a tenant to provide the landlord with a forwarding address in writing; not an email address. The landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit or apply to keep it. In this case, the tenant has not provided the landlord with a forwarding address in writing. Therefore, I order the landlord to keep the \$1,600.00 security deposit in partial satisfaction of the claim.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee.

I grant a monetary order in the amount of \$1,750.00 ($\$3,200.00 + \$50.00 + \$100.00 = \$3,350.00 - \$1,600.00 = \$1,750.00$) in favour of the landlord. The tenant must be served with the order which may be filed in the Provincial Court of British Columbia and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,600.00 security deposit and I grant a monetary order in favour of the landlord as against the

tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,750.00.

This order is final and binding and may be enforced.

This decision 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: February 22, 2024

Residential Tenancy Branch