



DECISION

Introduction

Both parties filed an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act).

The Landlord applied for an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2023 (Two Month Notice) and to recover the filing fee. The tenant applied for more time to make an application to dispute the Two Month Notice and to recover the 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.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Both parties confirmed service of the Proceeding Package and documentary evidence and that they had the opportunity to review same before the hearing.

Preliminary Matters

Both parties confirmed their respective email addresses during the hearing. As a result, this decision will be emailed to both parties. The combined hearing time was 104 minutes.

Issues to be Decided

Are the Landlord's entitled to a monetary order under the Act?

Are the Tenant's entitled to a monetary order under the Act?

What should happen to the security deposit of the Tenant?

Is either party entitled to their filing fee under the Act?

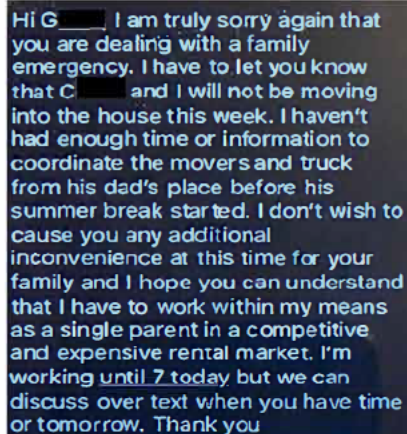
Background and Evidence

A copy of the tenancy agreement (TA) was submitted in evidence. A fixed-term tenancy began on July 1, 2023, and was scheduled to convert to a month-to-month tenancy after July 1, 2024. A security deposit of \$1,100 was paid by the Tenant at the start of the tenancy. The Tenant never moved into the rental unit for reasons which will be set out below. The Landlord continues to hold the Tenant's security deposit and has claimed against it as part of this application. Therefore, I will address the security deposit and calculate the interest on that deposit in this decision.

The TA indicates monthly rent of \$2,200 plus \$200 for utilities including electricity and heat. The TA was signed on June 8, 2023, by the Landlords and on June 9, 2023 by the Tenant. The Landlord confirmed the TA was emailed on June 8, 2023, which is supported by a text and to which the Tenant responded and stated that they will scan it and send it back. The Landlord wrote that in error they only signed the TA addendum and still had to sign TA. The Landlord stated that they received the signed TA copy back on June 9, 2023.

The Landlord stated that the next they heard from the Tenant was by text on June 20, 2023, and the Landlord showed their texts to support that 3 days later on June 23, 2023, they responded to the Tenant. The text on from the Landlord on June 23, 2023, indicated that they had a family emergency so were out of town, which the Landlord described during the hearing as death in the family.

On June 25, 2023, the Tenant texted the Landlord and stated the following:

A screenshot of a text message on a dark background. The text is white and reads: "Hi G____, I am truly sorry again that you are dealing with a family emergency. I have to let you know that C____ and I will not be moving into the house this week. I haven't had enough time or information to coordinate the movers and truck from his dad's place before his summer break started. I don't wish to cause you any additional inconvenience at this time for your family and I hope you can understand that I have to work within my means as a single parent in a competitive and expensive rental market. I'm working until 7 today but we can discuss over text when you have time or tomorrow. Thank you".

Hi G____, I am truly sorry again that you are dealing with a family emergency. I have to let you know that C____ and I will not be moving into the house this week. I haven't had enough time or information to coordinate the movers and truck from his dad's place before his summer break started. I don't wish to cause you any additional inconvenience at this time for your family and I hope you can understand that I have to work within my means as a single parent in a competitive and expensive rental market. I'm working until 7 today but we can discuss over text when you have time or tomorrow. Thank you

The Landlord stated that on June 26, 2023, they received the Tenant's written Notice of Termination letter dated June 16, 2023 (Termination Letter) and states in part that "as per the tenancy act, this is written notice terminating the agreement for the rental of [rental unit address] for July 1, 2023, as of June 25, 2023..." The Termination Letter stated the security deposit of \$1,000 paid on June 7 can be returned via e-transfer to the Tenant and included the name of the Tenant and their email address. There was no written forwarding address provided.

The Tenant claims that someone at the Residential Tenancy Branch (RTB) advised them that they could just supply their email address as a written forwarding address, which I will address in my analysis below.

The Landlord stated that they showed the rental unit to 6 people but all wanted the unit for August 2023. On July 2, 2023, they found a new tenant who moved in for July 15, 2023, at \$2,300 including utilities, leaving a shortfall of \$100 per month. The Landlord confirmed that \$1,150 was received for July 15, 2023 to July 31, 2023, inclusive, which left a shortfall of \$1,150 for July 2023 rent.

The Tenant eventually sent their written forwarding address by registered mail, which the Landlord signed for on July 31, 2023. The Landlord filed their claim against the Tenant and the security deposit on the same date, July 31, 2023.

The Tenant stated that they applied for 15 different places and that due to so many scams being out there, they felt they were not getting clear information from the Landlord about moving in early, so they cancelled the tenancy.

The Landlord stated that there were no verbal discussions as claimed by the Tenant between the June 8, 2023, text and the next text from the Tenant dated June 20, 2023, which was responded to by the Landlord on June 23, 2023, due to a family emergency noted above. During the hearing, the Tenant alleges that they never met KW and only dealt with GV as GV is who they paid their security deposit to.

The Tenant also alleged that on June 8, 2023, there was a verbal discussion with GV about moving into the rental unit before July 1, 2023, which GV vehemently denies. During the hearing, the Tenant alleges that it was 17 days before the Tenant heard from the Landlord, which the Landlord pointed out was not correct, that it was only 3 days between the Tenant's June 20, 2023, text and the Landlord's reply on June 23, 2023.

The Landlords stated that they were caught off guard and very surprised by the text from the Tenant dated June 25, 2023, stating that they could no longer move in when the Tenant had just asked on June 20, 2023, if they could move in earlier.

The Landlord also stated that they did not respond to the Tenant's email requesting the security deposit, as the Tenant must first provide their forwarding address in writing, which they did not do until it was received by registered mail on July 31, 2023.

The Landlords' monetary order worksheet lists that they are seeking \$1,100 for the July 1-14, 2023, rent that the Tenant failed to pay, plus \$1,200, which is \$100 per month for a total of 12 months for the remainder of the fixed-term ending July 1, 2024 as follows:

1. August 2023 shortfall of \$100
2. September 2023 shortfall of \$100
3. October 2023 shortfall of \$100
4. November 2023 shortfall of \$100
5. December 2023 shortfall of \$100
6. January 2024 shortfall of \$100
7. February 2024 shortfall of \$100
8. March 2024 shortfall of \$100
9. April 2024 shortfall of \$100
10. May 2024 shortfall of \$100
11. June 2024 shortfall of \$100
12. July 2024 shortfall of \$100

In addition, the Landlord is seeking \$17.50 for the advertising costs associated with updating the rental listing, which was supported by a receipt and the \$100 filing fee. The Landlord testified that they were lucky to secure a tenant so quickly for mid-July 2023 as all other prospective tenants were looking for August 2023, given the late notice by the Tenant.

The Tenant claims the text conversation between them supports that there was a verbal conversation between the parties between June 8, 2023, and June 20, 2023, which the Landlord stated the text does not imply, which I will address in my analysis below.

The Tenant claims that due to the low vacancy rate, the Landlords should have been able to find a new tenant and not have to include utilities to find one. The Landlord stated

that they did not want to reduce the amount they were receiving but felt they had to, to minimize their loss and made a hard decision to include utilities to make the rental unit more appealing, which worked for them by finding a new tenant for July 15, 2023.

The Tenant claims the Landlord did not show reasonable efforts by waiting until July 2, 2023, to hold an open-house. The Landlords replied by stating that July 1, 2023, was a holiday so it made sense to wait until July 2, 2023, to schedule the open-house and that they were not even notified in writing until June 26, 2023, and began to show the property on that day before the open-house but each person that viewed it wanted August 2023 as they had to provide notice to their landlord.

The Tenant referred to comparable properties being rented for \$2,400, which the Landlord stated provided no indication on the specific address, size or amenities and as a result, where of no use.

The Landlord stated that they are not trying to make money on what happened and are just trying to recoup their losses only based on the Tenant breaching their signed agreement. The Landlord also stated that everything was confirmed on June 8, 2023, so the fact the Tenant was questioning things after that date is in their mind. The Landlord stated that the actions of the Tenant caused them a lot of stress and that they Landlord did all they could to minimize their loss. The Landlord stated that in 25 years of being a landlord, this was the first time after signing a tenancy agreement, that a tenant refused to move in and backed out of a tenancy agreement.

The advocate stated the Landlord failed to submit bills or receipts, which when asked to clarify what they meant, changed their statement to that no new tenancy agreement was submitted to support that \$2,300 including utilities was paid by a new tenant as of July 15, 2023. The Landlord stated that they did not submit it to protect the privacy of the new tenant, but referred to the statement submitted dated from GK, who held the open-house on July 2, 2023, which resulted in a new tenant effective July 15, 2023 and that a one-year lease was signed for \$2,300 inclusive, which the Landlord stated was inclusive of utilities.

Analysis

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

Are the Landlord's entitled to a monetary order under the Act?
Are the Tenant's entitled to a monetary order under the Act?
Is either party entitled to their filing fee under the Act?

Firstly, I find the Tenant breached section 45(2) of the Act as once the Tenant signed the fixed-term tenancy, there was an enforceable contract between the parties. I afford no weight to the Tenant's "scam theory" as I find the texts between the parties clearly indicated that the Landlord's confirmed the start of the tenancy as July 1, 2023 and made no promises for the Tenant to move in sooner. I find that any miscommunication was on the part of the Tenant only and that the Tenant has false assumptions as to being able to move in early. I also disagree with the Tenant that the texts support a verbal conversation as I find the texts do not support such.

Therefore, I find the Tenant breached the fixed-term early and I find the Landlord complied with section 7 of the Act by doing what was reasonable to minimize their loss. Therefore, I award the entire Landlord's claim as claimed as follows:

1. Unpaid rent for July 1-14, 2023 inclusive of \$1,100,
 2. Loss of \$100 shortfall per month for 12 months as claimed for August 2023 to July 2024 as new tenancy included utilities in the amount of \$1,200,
 3. \$17.51 for advertising costs and
 4. \$100 filing fee under section 72 of the Act.
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TOTAL = \$2,417.50

I dismiss the entire Tenant's application as I find there is no merit, as an email address is not a written forwarding address as required under section 38(1)(b) of the Act. I find the Landlord filed their application the same day as the written forwarding address was received by registered mail on July 31, 2023.

What should happen to the security deposit of the Tenant?

As the Landlord's continue to hold the Tenant's \$1,100 security deposit, I find there is a total amount of interest of \$14.95, and I authorize the Landlords to withhold the entire amount of \$1,114.95, which includes interest towards the amount owing of \$2,417.50. This authorization is made under section 62(3) of the Act.

I grant the Landlord the amount of **\$1,032.55**, which is \$2,417.50 less the \$1,114.95 security deposit including interest under section 67 of the Act.

Conclusion

The Tenant's application is dismissed in its entirety.

The Landlords' application is full successful.

The Landlords have been issued a net monetary order in the amount of \$1,032.55 as indicated above. The Landlords must serve the Tenant with the Monetary Order along with a demand letter. Enforcement information can be found online at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/serving-and-enforcing-orders>

Should the Tenant fail to pay the full amount owed, they can be liable for enforcement costs 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: February 20, 2024

Residential Tenancy Branch