

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their security deposit
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package and evidence by email. The Tenant noted that they did not receive these documents by registered mail as testified by the Landlord.

The Landlord did not receive the Tenant's application or evidence. The Tenant testified that they sent these documents by registered mail to the address provided on the tenancy agreement by the Landlord, but the documents were returned by Canada Post. The Tenant provided documentary evidence in support of this claim.

The parties were offered the opportunity to adjourn the proceeding in light of the various service issues. Both parties consented to proceed with the hearing as scheduled, and all the evidence submitted by the parties was accepted.

I found there was no prejudice to either party by proceeding, as the parties each submitted many of the same documents as evidence, and the Tenant's unserved evidence was tenancy documents and communications with the Landlord of which the Landlord would reasonably be aware of.

## **Issues to be decided**

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of their security deposit?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

## **Preliminary Matter**

The Landlord claims the monthly rent was \$3164.00 per month, but the Landlord waived their right to collect the rent from the Tenant for the first month of the tenancy because they appreciated the Tenant's patience waiting to rent the unit, and captured this in the tenancy agreement addendum.

The Tenant claims the monthly rent was \$2900.00 per month, with the Landlord collecting payments of \$3164.00 per month for 11 months of the year. The Tenant claims the Landlord requested this and said it was so they would continue to be eligible for the mortgage on the rental unit.

The monthly rent according to the signed tenancy agreement is \$3164.00 per month. Term 20 of the signed and initialed tenancy agreement addendum clearly states that the first month of rent is free. However, based on the text messages and emails provided as evidence by both parties, I find the Tenant's claim of \$2900.00 per month in rent more likely on a balance of probabilities.

The parties are discussing and negotiating from November 2023 to February 2024 a rent increase to \$3100.00 or \$3050.00, but these amounts are lower than what is listed in the tenancy agreement. The Landlord notes in a text from the start of the tenancy that 'having the agreement this way' helps them meet financial obligations so they can maintain ownership of the rental unit.

For these reasons, I find the monthly rent during this tenancy was \$2900.00 per month.

## **Facts and Analysis**

This tenancy began on March 5, 2023, with a monthly rent of \$2900.00 per month, and with a security deposit of \$1580.00.

The following are agreed facts. The Tenant's rented the rental unit under a single tenancy agreement. In November 2023, Tenant J.B.T. moved out of the rental unit.

Tenant J.B.T. told the Landlord they were moving out, and that Tenant M.J. would continue the tenancy, in an email dated October 13, 2023. Starting in November 2023, the Landlord and Tenant M.J. began negotiating a new tenancy agreement, with a different rent value and terms. The parties were unable to reach an agreement about the new tenancy due to a dispute about the monthly rent.

The Tenant claims they told the Landlord verbally on February 4, 2024, that they did not want to continue the tenancy after on March 5, 2024, the end of the fixed term. The Tenant texted the Landlord on February 8, 2024, to say that they are not willing to sign another lease and will be moving on by the end of the fixed term tenancy.

The Landlord claims \$3164.00 for lost rental income for the month of March 2024. The Landlord claims the tenancy ended on March 5, 2024, without a proper written notice to end tenancy being provided by the Tenant at least one full month before this date. The parties completed a move out condition inspection report on March 4, 2024, and the Tenant provided their forwarding address in writing on the same date.

The Landlord testified that they posted the rental unit for rent on Facebook on February 8, 2024, after they first became aware that the Tenant planned to move out by March 5, 2024. The Landlord was unable to re-rent the rental unit until May 1, 2024. The Landlord renewed the rental listing often during this period.

The Tenant claims the Landlord's attempts to raise the rent above the amount allowed by the Act forced the Tenant to move out of the rental unit. The Tenant felt that Landlord had taken advantage of them and was attempting to negotiate in bad faith. The Tenant no longer felt comfortable continuing the tenancy.

The Tenant claims the tenancy ended in November 2023 after Tenant J.B.T moved out of the rental unit. The Tenant believes that for this reason, the parties were not in a tenancy and the Tenant did not have an obligation to give a written notice to end tenancy.

Both parties provided copies of text messages, emails, and the tenancy agreement and addendum as evidence to support their claims.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?**

Tenancy Policy Guideline 13 (PG 13) offers guidance on the rights and responsibilities of co-tenants, which are two or more tenants renting the same rental unit under the same tenancy agreement. Co-tenants are jointly and severally liable for the terms of the tenancy agreement, which means they are held equally responsible if the Act, regulation, or tenancy agreement are breached by any tenant during the tenancy.

Based on the tenancy agreement and testimony of both parties, I find Tenant M.J. and Tenant J.B.T. are co-tenants.

PG 13 says a co-tenant may end the tenancy for all tenants under the tenancy agreement by giving a proper written notice to end tenancy to the Landlord. If a co-tenant moves out without giving a proper notice to end tenancy, they remain liable for the tenancy agreement until the tenancy ends even if they don't live in the rental unit.

Section 45 of the Act says a tenant may end a tenancy by giving a written notice that complies with section 52 of the Act.

Section 52 of the Act says, to be effective, a written notice to end tenancy must be in writing, be signed and dated by the tenant giving the notice, give the address of the rental unit, and state the effective date of the notice.

Based on the emails provided by both parties as evidence, I find that Tenant J.B.T.'s email dated October 13, 2023, was not an effective notice to end tenancy under sections 45 and 52 of the Act. The email was not signed and did not list an effective date, or state that it was ending the tenancy. The email clearly states that Tenant J.B.T. is moving out, but that Tenant M.J. will be taking over the tenancy and continuing it.

For these reasons, and with reference to PG 13, I find the tenancy continued with both co-tenants under the original tenancy agreement, even after Tenant J.B.T. moved out on November 15, 2023.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be awarded compensation for damage to the rental unit, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Tenancy Policy Guideline 3 says a landlord may claim lost rental income if a Tenant fails to follow the requirements of section 45 when issuing a notice to end tenancy.

Section 45 of the Act says a written notice to end tenancy must be given by the Tenant with an effective date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

Under section 45 of the Act, I find the Tenant was required to give their written notice to end tenancy effective March 5, 2024, by no later than February 4, 2024. Based on the evidence and testimony of both parties, the Tenant texted the Landlord about ending the tenancy on February 8, 2024, and moved out on March 5, 2024. I find the Tenant breached section 45 of the Act by failing to provide the Landlord with one full month of

written notice as required, and by not providing a written notice to end tenancy that complies with section 52 of the Act.

Based on the Landlord's testimony and evidence, I find the Landlord was unable to re-rent the rental unit for March 2024. As the Tenant did not give proper notice under section 45 of the Act, they are still liable for the rent in March 2024. I accept the Landlord's testimony that they took reasonable steps to minimize their loss, by posting the rental unit on Facebook for rent immediately after receiving the Tenant's written notice.

For the above reasons, I find the Landlord is entitled to a monetary order of \$2900.00, for loss of rental income in March 2024 under section 67 of the Act.

**Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of their security deposit?**

Section 38 of the Act says within 15 days of the date that the landlord receives the tenant's forwarding address in writing, the landlord must make an application for dispute resolution to claim against it.

As the forwarding address was provided on March 4, 2024, and the Landlord made their application on March 18, 2024, I find that the Landlord made their application within the time limit of the Act.

Section 72 of the Act says that any monetary order made against a Tenant may be applied against the security deposit of the Tenant.

Therefore, I find the Landlord is entitled to retain the Tenant's security deposit of \$1580.00, plus interest, in partial satisfaction of the monetary order.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was not successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

## Conclusion

I grant the Landlord a Monetary Order of **\$3000.00** under sections 67 and 72 of the Act. I Order the Landlord to retain the Tenant's security deposit of \$1580.00, plus interest, in partial satisfaction of this award. I Order the Tenant to pay the Landlord the balance due of **\$1378.48**.

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
a Monetary Order under section 67 of the Act	\$2900.00
Landlord's filing fee	\$100.00
Tenant's security deposit, plus interest	-\$1621.52
<b>Total Amount</b>	<b>\$1378.48</b>

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: May 15, 2024

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Residential Tenancy Branch