



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding FOCUS 2000 BUSINESS VENTURES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL / MNSDS-DR, FFT

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:

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

The Tenant seeks:

- An order for the Landlord to return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord's Application

The Landlord's Agent testified the Notice of Dispute Resolution Proceeding (the Materials) and the Landlord's evidence was served to the Tenant on January 23, 2025

by registered mail to the forwarding address provided by the Tenant on the end of tenancy condition inspection report. Copies of the Canada Post receipt and postage label were provided by the Landlord. I find the address used by the Landlord matches the one provided by the Tenant.

The Tenant testified they had not received the package from the Landlord and noted there was an error in the address they provided.

Based on the above, I find the Landlord's Materials and evidence were served to the Tenant in accordance with sections 88(d) and 89(1)(d) of the Act and were deemed received on January 28, 2025, five days after sending in accordance with section 90(a) of the Act.

I find the Landlord was entitled to rely on the forwarding address as an address for service given by the Tenant, who bore the onus to give the correct address. Because of this, to find any defect in the Landlord's service would be prejudicial to the Landlord since the issues with the Tenant's receipt of the package appear to be due to their own mistake and no fault of the Landlord. I also did not find it proportionate or necessary adjourn the matter to allow for service to be repeated.

The Tenant's Application

The Tenant testified they had not served their Materials and evidence to the Landlord, believing they were not required to take any further action after submitting their Application. As was discussed during the hearing, the email sent to the Tenant by the Residential Tenancy Branch confirmed the opposite was the case and they were informed of the steps they needed to take to notify the Landlord of the claim against them, namely, by serving the Materials and evidence.

Given the above, I find the Tenant did not serve the Materials to the Landlord in accordance with section 89 of the Act and rule 3.1 of the *Rules of Procedure*. I therefore dismiss the Tenant's Application to recover the filing fee without leave to reapply. As explained during the hearing, as the Landlord's Application includes a request to retain the security deposit, the question of what happens with the deposit will be considered under the Landlord's claim in any case.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to retain the Tenant's security deposit?
- 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:

- The Tenant took occupancy in the residential property on August 1, 2023.
- The residential property is a three-bedroom property, with the Tenant occupying one of the bedrooms at a given time.
- The Tenant paid a security deposit of \$300.00 to the Landlord on July 31, 2023.
- From August 1, 2023, the Tenant began paying \$600.00 per month to the Landlord on the first day of the month by e-transfer.
- A written tenancy agreement was entered into before August 1, 2023, but a copy was not provided as evidence.
- When other occupants of the residential property left in May 2024, a new agreement was signed to include incoming occupants of the residential property, a copy of which was provided as evidence.
- The Tenant moved rooms in the residential property and began paying \$715.00 per month from May 1, 2024.
- The Tenant also paid a further security deposit of \$57.50 to the Landlord on April 21, 2024.
- The Tenant vacated the residential property on January 18, 2025.

The Landlord took the position the whole residential property was rented to all the occupants, including the Tenant, though they all paid their rent and security deposits separately. When one of the occupants moved out, they would offer a new tenancy agreement for any remaining occupants and the incoming occupants to sign, as was the case when an occupant left in May 2024.

On or around December 24, 2024, an occupant, EJ, provided notice to end the tenancy effective December 31, 2024. Whilst the Landlord acknowledged this was "late notice", they nevertheless accepted it and informed the other three occupants, including the Tenant, that given EJ's notice, the group's tenancy was over and if they did not agree to a new agreement, they would have to vacate by December 31.

The two other occupants besides EJ and the Tenant opted to vacate. The Tenant provided notice to the Landlord they would be vacating on January 31, 2025 and paid the Landlord \$715.00 for rent due January 1, 2025.

As the Tenant was the sole occupant of the residential property from January 1, 2025 and the Landlord only received the \$715.00 paid by the Tenant for the month, they served a 10 Day Notice to End Tenancy for Unpaid Rent solely to the Tenant. A copy of the notice was given as evidence and provides for unpaid rent of "\$2,925.00 - \$715.00" due January 1. The effective date of the notice is January 18.

The Landlord argues that whilst the agreement offered to the Tenant in December 2024 was not accepted, the existing agreement required them to be responsible for the entirety of the rent for the residential property, which was \$2,925.00 per month under the terms of the offer rejected by the Tenant.

As the outstanding amount on the notice to end tenancy was not paid, the Landlord informed the Tenant they would have to vacate by January 18, which the Tenant did, and the parties completed an end of tenancy move-out condition inspection report. The Landlord disputed any notion they forced the Tenant to leave. The Landlord seeks unpaid rent from the Tenant of \$2,210.00 plus unpaid utilities of \$92.31.

The Tenant disputed the notion they ever agreed to be responsible for the entirety of the rent for the residential property, and they were only required to pay \$715.00 per month, which they did throughout their tenancy. The Tenant indicated their position was based on the Landlord dealing with the occupants of the property on an individual basis throughout their time there.

The Tenant testified they were forcibly removed from the property by the Landlord's Agent on January 18, 2025. After this, they stayed with friends until the tenancy they already had lined up started in February.

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.

The Landlord claims a full month's rent for January 2025 from the Tenant, less the amount they paid on January 1. The Landlord takes the position the Tenant is responsible for the full amount, while the Tenant takes a contrary position, arguing they were only required to pay the \$715.00 per month as they had been doing previously.

After considering the evidence before me, I find the Tenant's position more compelling, and that the Landlord has failed to establish their claim against the Tenant. My reasons are as follows.

Whilst the written tenancy agreement – a non-standard document which appears to have been drafted by the Landlord themselves – lists the Tenant as a “tenant/applicant” and the other occupants as “co-tenant/co-applicant”, I find the conduct of the parties does not indicate the occupants of the residential property were co-tenants, rather they were tenants sharing a common space, also referred to as tenants in common.

The distinction between co-tenants and tenants in common is an important one to make. Co-tenants under a tenancy agreement are jointly and severally responsible for meeting terms under the agreement. If, for example there are four co-tenants under a tenancy agreement, if rent is not paid in full the landlord can seek payment from any, or all, of the four co-tenants. Similarly, if a security deposit is paid by four co-tenants, any or all of them may either authorize the landlord to retain the deposit or accept or request its return. Under this type of agreement, the landlord has satisfied their obligations if they return the whole deposit to just one of the four tenants, given the joint and several responsibilities of co-tenants.

Tenants in common are only liable to meet the obligations under their own agreement and not for other tenants sharing a common space. This means a tenant in such an agreement, as an example, is only required to pay the rent due under their own agreement and can only authorize the landlord to retain their own security deposit and request its return, and they have no say or claim over the deposit of any other tenants who they share a common space with.

As set out in Policy Guideline 13 - *Rights and Responsibilities of Co-Tenants*, where multiple people live in the same rental unit and pay part of the rent to the landlord, there is a presumption that they are co-tenants unless there is compelling evidence to the contrary.

The evidence before me indicates that whilst the parties occupying the residential property signed the same document and are referred to as co-tenants renting the “whole internal space” of the residential property, the conduct of the parties indicates there are separate implied agreements between the Landlord and tenants sharing a common space.

As parties leave the residential property over time, the Landlord is seen to record the amount of a security deposit they hold for each party, who each pay a separate amount for rent. The deposits are seen to be dealt with on an entirely individual basis and the amounts are determined based on how much monthly rent is. I find this indicates the intentions of the parties to create separate agreements and responsibilities, as was the Tenant’s understanding. It is also recorded in the tenancy agreement that if other parties are added, deposits will be adjusted and re-funded. Had the intention been for the occupants of the residential property to be co-tenants, there would just be one deposit not attributed to a particular party for which all had a claim to.

Based on the above, I find there is compelling evidence indicating the occupants of the residential property, including the Tenant, were tenants sharing a common area. As such, they were responsible for only the rent they were required to pay under their respective agreements. In this case, the Tenant was required to pay \$715.00 on the first day of the month, which they did. The agreement was not for them to be jointly and severally responsible for the rent for the whole residential property. It was also undisputed that the Tenant did not accept the terms put to them by the Landlord to enter into a new agreement providing for rent of \$2,925.00 per month.

I did not find sufficiently compelling evidence indicating the Tenant owed unpaid utilities to the Landlord. The occupants each paid \$25.00 per month for utilities, which was then “adjusted” when the utility bills were available to the Landlord. The Landlord did not provide copies of the bills, just a spreadsheet they appear to have drafted themselves, which I give little weight to.

Given the above findings, I dismiss the Landlord's claims for unpaid rent and utilities against the Tenant without leave to reapply.

As the Landlord has no authority to retain the Tenant's security deposit, given their monetary claim is dismissed, under the authority set out in section 62(3) of the Act I order the Landlord to return the Tenant's security deposit, plus interest. Based on the evidence before me, I find the Tenant has not extinguished their right to the return of the security deposit under sections 24, 36 or 39 of the Act. I also find the Landlord has complied with the fifteen-day timeframe to apply against the deposit set out in section 38(1) of the Act, so the deposit is not doubled.

Per section 4 of the *Residential Tenancy Regulation*, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the deposit using the Residential Tenancy Branch interest calculator using today's date. The amount of interest accrued on the \$300.00 paid July 31, 2023 is \$11.46 and \$1.23 on the \$57.50 paid April 21, 2024. The Tenant is issued a Monetary Order for \$370.19 accordingly.

As the Landlord was unsuccessful in their Application, they must bear the cost of the filing fee. I dismiss their claim under section 72 of the Act without leave to reapply.

Conclusion

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

The Tenant is issued a Monetary Order for \$370.19 for the return of their security deposit, plus interest. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

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: April 11, 2025

Residential Tenancy Branch