



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This participatory hearing was convened after the issuance of a November 14, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord's agent, J.F. (the "landlord") attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord informed that the tenant had vacated rental unit on October 12, 2017 and that the landlord was no longer pursuing the Order of Possession. The landlord wished to amend the application to reflect only the unpaid rent which remained outstanding.

Pursuant to section 64(3)(c) the landlord's application is amended to reflect a request for only a monetary award.

The landlord provided undisputed testimony that the Notice of Hearing and evidentiary package were sent to the tenant by way of Canada Post Registered Mail on November

21, 2017. The landlord provided a copy of the Canada Post tracking number to the hearing and stated that the landlord's records indicate that the package was collected on November 24, 2017. Pursuant to sections 88 and 90 of the *Act*, the tenant is deemed to have been served on November 25, 2017 with the Notice of Hearing and evidentiary package.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The tenancy in question began on June 1, 2017. Rent was \$750.00 per month, and a security deposit of \$375.00 continues to be held by the landlord.

The landlord gave testimony that the application for Direct Request was reconvened to a participatory hearing because an Adjudicator determined that, "The most recent residential tenancy agreement submitted by the landlord indicates the monthly rent is due on the 31-1 day of each month. I find that the landlord has provided two different days for the rental due date and that this discrepancy raises questions that cannot be answered within the purview of the direct request process."

The landlord explained that they understood the confusion which resulted from the tenancy agreement but testified that no rent was paid on either date for September or October 2017, and that rent was in fact due on the 1st of the month.

Analysis

Section 67 of the *Act* establishes 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$1,500.00 for unpaid rent for the months of September and October 2017. The landlord provided undisputed testimony that rent was not paid for these months and that the tenant vacated the premises on October 12, 2017 with these funds outstanding.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction for the monetary award.

Conclusion

I make a Monetary Order of \$1,125.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for September 2017	\$750.00
Unpaid rent for October 2017	750.00
Less Security Deposit	(-375.00)
Total Monetary Order	\$1,125.00

The landlord is provided with a formal Order in the above terms. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: January 11, 2018

Residential Tenancy Branch