



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1048359 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for unpaid rent.

Five agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Tenant during the approximately 20-minute duration of the hearing.

The Landlord testified that they sent the Notice of Dispute Resolution Proceeding package to the Tenant, along with a copy of their documentary evidence by registered mail. The registered mail tracking number was provided and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered. The Landlord testified that the address used was the forwarding address provided by the Tenant. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord submitted documentary evidence prior to the hearing. However, as I was not able to open the Monetary Order Worksheet submitted, I requested that the Landlord re-submit this evidence to the online system to be included as part of this

decision. The Landlord submitted the worksheet following the hearing and it was therefore considered as part of this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on December 1, 2016. Monthly rent was \$1,475.00 due on the first day of each month. A security deposit of \$737.50 was paid at the outset of the tenancy and applied to unpaid rent during the tenancy. The tenancy agreement was submitted into evidence and confirms the details of the tenancy as stated by the Landlord. The Landlord was unsure of the exact date, but stated that the Tenant moved out in February 2018.

The current management company took over for the previous management company in August 2018. At that time, when reviewing the past accounts, they realized that there was outstanding rent that the Tenant had not paid during the tenancy.

The Landlord stated that a total of \$8,112.50 is left unpaid from the tenancy. They submitted a snapshot of the account ledger from the previous management company which states the following:

(December, June, July paid; now ½ August rent, September, October, November, December, January) – May was collected after statements in June.

(Reproduced as written)

The Landlord provided clarification that this was regarding unpaid rent for August to December 2017 as well as January 2018. The Landlord stated that this is equivalent to 5.5 months of unpaid rent.

The Landlord stated that a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) dated August 2, 2017 was on their files for the Tenant, showing an amount of \$5,900.00 as unpaid. They testified that it appears that this amount remains outstanding. They were unsure why the 10 Day Notice was not enforced and why the tenancy continued until February 2018 with a large amount of rent unpaid. The 10 Day Notice was not submitted into evidence.

The Monetary Order Worksheet submitted into evidence states that an amount of \$5,900.00 is owing as shown on the 10 Day Notice and that an additional \$2,212.50 is owing based on the account ledger from the previous management company.

Analysis

In consideration of whether a party is entitled to compensation, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord provided undisputed testimony that they believe they are owed \$8,112.50 in unpaid rent. Out of this amount, they testified that \$5,900.00 was owing based on a 10 Day Notice that was issued for this amount. However, the 10 Day Notice was not submitted into evidence and the Landlords were not entirely sure if this amount had been paid to the previous management company after the Tenant was served with the 10 Day Notice.

Section 46(4) of the *Act* states that a tenant has 5 days in which to dispute a 10 Day Notice or pay the rent owing, otherwise Section 46(5) applies, and the tenant is conclusively presumed to have accepted the notice and must vacate the rental unit. As the Landlord provided testimony that the 10 Day Notice was served to the Tenant in August 2017 and the tenancy continued until February 2018, and without further evidence to establish whether the amount owing on the 10 Day Notice remained unpaid, I find that the Landlord did not satisfy me that this amount is still owing.

I also note that as stated in rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. As such, it is up to the Landlord to submit sufficient evidence to prove that they are owed compensation.

A party claiming a loss also has a duty take reasonable steps to minimize their loss, pursuant to Section 7(2) of the *Act*. Had the Tenant received a 10 Day Notice and not

paid the rent owing within 5 days, the landlord at the time could have enforced the 10 Day Notice and ended the tenancy, thus limited potential future losses. As such, I am not satisfied that reasonable steps were taken to minimize the losses incurred.

As for the remainder of \$2,212.50 claimed by the Landlord, they stated this amount was noted on the account ledger from the previous management company. The snapshot of the ledger was submitted into evidence. However, the ledger does not include details of how much was paid, when it was paid, any partial payments made, or even years for the dates that rent was outstanding. While the ledger states that this amount is owing, without further details, I am not satisfied that this amount is still owing and should be awarded to the Landlord.

Therefore, I do not find that the Landlord met the burden of proof to establish that the Tenant breached the *Act* by not paying rent and that they experienced a loss valued at \$8,112.50 as a result. Accordingly, I decline to award any compensation to the Landlord. Their Application for Dispute Resolution is dismissed, without leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: December 20, 2018

Residential Tenancy Branch