



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on January 17, 2019 wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on January 4, 2019 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for 11:00 a.m. on February 28, 2019. Only the Landlord's Agent, K.B., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:24 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that they served the Tenant with the Notice of Hearing and the Application on January 17, 2019 by registered mail. The Landlord's Agent testified that the package was returned as being undeliverable on January 21, 2019. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, the Tenant is deemed served as of January 22, 2019.

The Landlord's Agent also testified that when the registered mail package was returned to them on January 21, 2019, they posted the hearing package to the rental unit door. I find the Tenant was duly served with notice of the hearing and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord's Agent confirmed that the Tenant moved from the rental unit at some point in time in January of 2019. A final inspection was done on January 29, 2019.

As the Tenant vacated the rental unit the Landlord's request for an Order of Possession was no longer required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The agreement provided the following: the tenancy was for a one year fixed term commencing October 1, 2018; rent was payable in the amount of \$1,100.00 per month; and, the Tenant o paid a security deposit of \$550.00.

The Tenant failed to pay rent January 2019 such that the Landlord issued the Notice. The Notice was posted to the door on January 4, 2019 and was to be effective January 17, 2019.

The Tenant failed to pay the outstanding rent and failed to apply to dispute the Notice.

The Landlord confirmed that immediately upon becoming aware the Tenant had vacated the rental unit the Landlord began advertising the rental unit on their own site, as well as three popular rental website. The Landlord's Agent confirmed that it has been unusually cold and snowy in the community in which the rental unit is located such that people are not moving as they normally do in February and that despite there being a housing crisis they have several vacancies in their rental portfolio.

The Landlord also claimed the sum of \$84.00 relating to a service call from an electrician. The Landlord's Agent stated that the Tenant called about the baseboard heater not working. The Tenant was informed how to switch the breaker on the breaker panel and the Tenant insisted that was not the problem such that an electrician was called. When the electrician arrived it was determined that the breaker was indeed switched and the call was not necessary. Introduced in evidence was a copy of a letter from the Landlord to the Tenant dated December 7, 2018 which enclosed the invoice from the electrician.

The Landlord also sought to recover the filing fee of \$100.00 as well as authority to retain the Tenant's \$550.00 security deposit towards the amounts claimed.

Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that the Tenant did not pay rent for January 2019 such that the Tenant is in breach of the tenancy agreement and section 26 of the *Residential Tenancy Act*. The Landlord is therefore entitled to recover the loss of rent for January 2019. Pursuant to the residential tenancy agreement the Landlord is also entitled to recover the \$25.00 late fee for January 2019.

I also accept the Landlord's evidence that the rental unit was not able to be re-rented as of February 1, 2019 such that the Landlord lost a further month's rent. This amount is also recoverable from the Tenant.

As the Landlord has been substantially successful, I award the Landlord recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,325.00** calculated as follows:

Unpaid rent for January 2019	\$1,100.00
January 2019 late fee	\$25.00
Unpaid rent for February 2019	\$1,100.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,325.00

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$550.00 security deposit towards the amounts claimed and I grant the Landlord a Monetary Order for the **\$1,775.00** balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: March 4, 2019

Residential Tenancy Branch