



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 103 - 8414 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's representative (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the hearing, the landlord testified that a copy of the dispute resolution hearing package was sent to the tenant by registered mail at the address that an Adjudicator appointed pursuant to the *Act* allowed the landlord to serve the tenant at as per a May 24, 2019 Substituted Service Decision of the RTB on June 6, 2019. The landlord did not have the Canada Post Tracking Number to confirm that registered mailing. The landlord also testified that a copy of the dispute resolution hearing package and copies of the landlord's written evidence were sent in a second registered mail package to the tenant at that same mailing address on July 10, 2019. The landlord provided the Canada Post Tracking Number of the second registered mailing. The landlord gave sworn testimony that the package sent on July 10, 2019 remains out for delivery and has not been returned yet to the landlord. In accordance with sections 71, 88, 89 and

90 of the *Act*, I find that the tenant was deemed served with this package on July 15, 2019, the fifth day after this registered mailing.

At this hearing, the landlord lowered the amount of the requested monetary award from the \$10,000.00 cited on the landlord's application to \$8,749.99 plus the recovery of the landlord's \$100.00 filing fee. This amount aligned with the amounts cited in the October 30, 2018 decision of another arbitrator appointed pursuant to the *Act* (see above).

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The details surrounding this tenancy were outlined in the October 30, 2018 decision issued by the previous arbitrator regarding the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice):

...Both parties agreed that the tenancy began on August 1, 2017, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the fixed term. The parties also agreed that the Tenant paid the first years' worth of rent at the outset of the tenancy, in the amount of \$55,000.00. Both parties also agree that the \$2,500.00 security deposit for this tenancy, has not been paid by the Tenant. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord...

As part of the previous arbitrator's decision to dismiss the tenant's application to cancel the 10 Day Notice issued on September 13, 2018 and issue an Order of Possession to the landlord, the previous arbitrator made the following final and binding findings:

...I accept the testimony of both parties that the Tenant paid \$2,500.00 in rent for August 2018, and \$2,500.00 in rent for September 2018, and has paid nothing for October 2018. As of the date of this hearing I find that the Tenant is past due in his rent, in the amount of, \$8749.99; consisting of \$2,083.33 for August 2018, \$2,083.33 for September 2018, and \$4583.33 for October 2018...

The landlord's current application is to seek a monetary award for unpaid rent owing from August, September and October 2018. As no further payments have been

received from the tenant since the October 30, 2018 decision was issued, the landlord applied for a monetary award to recover this unpaid rent.

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

In this case, I find that I am bound by the findings reached by the previous arbitrator as to the amount of unpaid rent owed by the tenant to the landlord for the three months identified in the landlord's application for a monetary award. As the landlord gave undisputed sworn testimony that no further payments have been paid by the tenant to the landlord since October 30, 2018, I allow the landlord a monetary award of \$8749.99. This award enables the landlord to recover unpaid rent of \$2,083.33 owed from August 2018, \$2,083.33 owed from September 2018, and \$4583.33 for October 2018, the amounts identified in the finding of the previous arbitrator reported in their October 30, 2018 decision.

Since the landlord has been successful in their application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$8,849.99, to recover unpaid rent owing from August, September and October 2018, and the filing fee for this application.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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 *Residential Tenancy Act*.

Dated: July 30, 2019

Residential Tenancy Branch