



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S MNRL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with counsel RH (“the landlord”). The tenant’s agent DE attended (“the tenant”). Each party had the opportunity to call witnesses, and present affirmed testimony and written evidence.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 2, 2019. The tenant acknowledged receipt. Based on the compliance of the tenant with sections 89 and 90, accompanied by the acknowledgement of receipt by the tenant, I find the landlord served the tenant with these documents.

The landlord also provided affirmed testimony that the landlord served the tenant with the evidence package sent, firstly, both by registered mail mailed on August 2, 2019 to the tenant, and, secondly, to counsel for the tenant. The landlord provided the tracking

numbers in support of service to which reference is made on the first page. The addresses were provided by the landlord in affirmed testimony and the tenant agreed the addresses of both the tenant and the tenant's counsel were correct.

Nevertheless, the tenant did not acknowledge receipt. The tenant surmised that the registered mail "may have been misplaced by someone". The tenant provided no testimony of making reasonable efforts to locate the registered mail in preparation for the hearing.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

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

...

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.

...

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received...It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

In considering the evidence and testimony, I find the tenant has not rebutted the deemed receipt presumption. I find the tenant's testimony exhibited an apathetic and uninterested approach to the arbitration and did not provide a plausible explanation for the failure of the agent to have the materials at hand, except for the unconvincing

speculation that the registered mail “may” have been misplaced. The tenant did not deny receipt, merely that the landlord’s agent did not have the materials in front of him at the hearing. The tenant acknowledged that the addresses of the tenant and the tenant’s counsel to which the evidence was mailed, were correct. As the tenant attended the hearing, there is no dispute that the tenant was made aware of the time and date of the hearing, as well as the teleconference access codes and process for submitting evidence.

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

Therefore, pursuant to my authority under section 71(1)(b) of the *Act*, and considering the evidence and testimony of the parties, I find that the tenant was sufficiently served with the evidence on August 5, 2019, 5 days after mailing.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed they entered into a tenancy beginning December 2016 and ending on April 31, 2019 for rent of \$9,000.00 a month. The tenant paid a security deposit of

\$4,500.00 at the beginning of the tenancy, which the landlord holds. The tenant has not provided the landlord with authorization to retain the security deposit.

The landlord submitted a copy of the lease and addendum which provided that the tenant “agrees to pay the utilities, including water, gas, electricity and internet fee.” The Addendum also provided that the tenant “agrees to maintain the garden and swimming pool”.

The landlord testified the tenant provided one month notice at the end of March 2019 that the tenant was vacating in one month. A copy of the letter was submitted by the landlord in evidence. The landlord accepted the notice. The landlord filed this application on May 15, 2019, within 15 days of the end of the tenancy.

The landlord testified the landlord was informed by neighbours that the tenant had abandoned the unit at the end of March 2019 and not the end of April 2019 as expected. The landlord accordingly attended at the unit and discovered the tenant had vacated the unit leaving the back door open and the front lock sealed with glue and a broken key. The unit required substantial cleaning and was dirty throughout. The tenant left considerable garbage behind. The pool required maintenance.

In the notice letter of March 29, 2019, the tenant stated, “Please inspect the property and notify me in writing with supporting photographs by April 7, 2019 of any damages which you believe should be rectified, also providing estimates of the costs of rectifying such damages, if any.”

The landlord explained that no condition inspection with the tenant was conducted on moving out.

The landlord clarified the landlord’s claim as follows:

| ITEM | AMOUNT |
|-----------------------|------------|
| Rent for March 2019 | \$9,000.00 |
| Rent for April 2019 | \$9,000.00 |
| Outstanding utilities | \$9,414.59 |

| | |
|----------------------------------|--------------------|
| Replacement of lock | \$2,838.15 |
| Cleaning costs and waste removal | \$2,400.00 |
| Pool maintenance | \$2,018.29 |
| Reimbursement of the filing fee | \$100.00 |
| Total Claim by Landlord | \$34,771.03 |

The landlord requested authorization to apply the security deposit to the monetary award.

Each claim is examined in turn.

Rent for March and April 2019

The landlord claimed the tenant owed the landlord rent for two months (\$9,000.00 x 2) for a total of \$18,000.00.

The tenant acknowledged that the tenant owed two months rent.

However, the tenant claimed entitlement to reimbursement of four months rent paid during 2017 when there was water damage in the house. The landlord stated the tenant has never claimed reimbursement for four months rent because of water damage to the unit and denied that this was a valid reason for the non-payment of rent. The tenant submitted no evidence in support of this claim.

The tenant also claimed that the tenant left substantial sophisticated equipment in the unit for the which the tenant claimed off-setting. The landlord denied the landlord agreed to compensate the tenant for anything left in the unit. The tenant submitted no evidence of the value of any such equipment. The tenant acknowledged the tenant has not brought an application for compensation. The tenant submitted no evidence with respect to this claim.

Outstanding utilities

The landlord claimed reimbursement of the amount of \$9,414.59 for outstanding utilities during the tenancy pursuant to the terms of the agreement. The landlord submitted uncontradicted testimony and evidence in support of the claim.

In support of the landlord's claim in this regard, the landlord also submitted as evidence a copy of a letter dated April 29, 2019 from counsel JM for the tenant offering to pay, "Balance owing for Utilities of \$8,300.00". (as written)

The tenant acknowledged that JM, lawyer, author of the letter of April 29, 2019, was the lawyer for the tenant and authorized by the tenant to settle outstanding financial issues with the landlord.

Nevertheless, without providing supporting reasons, the tenant denied responsibility for the outstanding utilities.

Replacement of lock

The landlord claimed \$2,838.15 for reimbursement of the main lock for the unit. The landlord testified that glue was placed in the lock and a key broken off, rendering the lock useless. The landlord stated the lock was a high-quality imported lock and \$2,838.15 was the replacement cost.

In support of this claim, the landlord submitted copies of texts from the tenant in which the tenant offered to reimburse the landlord for the lock. The landlord also submitted as evidence a copy of a letter (referenced above) dated April 29, 2019 from counsel JM for the tenant offering to pay, "Cost to replace the entrance lock of \$2,835.00".

During the hearing, the tenant acknowledged that the landlord paid the amount claimed for the replacement of the lock and the tenant was responsible for the damage to the lock. The tenant acknowledged that JM, lawyer, author of the letter of April 29, 2019, was the lawyer for the tenant and authorized by the tenant to settle outstanding financial issues with the landlord.

However, the tenant said the cost was excessive, that the tenant expected to pay \$150.00 only.

Cleaning costs and waste removal

The landlord claimed that the tenant left the unit in a dirty condition with "garbage everywhere". The landlord claimed reimbursement of a cleaning expense of \$2,000.00 to which the tenant objected, claiming the tenant left the unit "immaculate".

The agent representing the tenant at the hearing testified that the tenant left the unit in perfect condition. However, the agent acknowledged he had not viewed the unit at the end of the tenancy. The agent testified that he based the assertion on pictures and videos which the tenant acknowledged were not uploaded as evidence or sent to the landlord. The tenant provided no witness statements or evidence in support of the claim that the unit was left in good condition.

The tenant agreed to reimburse the landlord for an additional \$400.00 claimed for expenses carrying away garbage.

In support of the claim for cleaning costs, the landlord submitted a copy of the receipt and many pictures showing dirty bathrooms, soiled floors, miscellaneous garbage and filthy appliances.

Pool maintenance

The landlord testified the landlord incurred pool maintenance costs of \$2,018.29 in support of which the landlord submitted receipts. In the above letter of April 29, 2019, the tenant's counsel acknowledged responsibility for these costs.

The tenant denied responsibility for the pool maintenance costs when the tenant vacated without providing any supporting reason.

Analysis

The landlord submitted a substantial evidence package including considerable correspondence between the parties, photographs and documents. The hearing lasted

80 minutes. Not all evidence will be referenced. Only key, relevant evidence will be addressed.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

I have considered that the tenant denies responsibility for all the landlord's claims. I do not accept the tenant's account. I prefer the version of events to which the landlord testified as supported by witness statements, photographs, receipts and substantial documentary evidence. I find the landlord credible, informed and prepared. I find the tenant's testimony, unsupported by evidence, to be unreliable, dishonest, and evasive.

Reference to each of the landlord's claims follows.

Outstanding rent

The tenant acknowledged owing two months rent for a total of \$9,000.00. The tenant submitted no evidence that the landlord agreed to reduce this amount or offset the rent owing with equipment left in the unit.

I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes the landlord for two months rent and I accordingly grant a monetary award to the landlord in this amount.

Outstanding utilities

Replacement of lock

These claims are considered together. The landlord submitted uncontradicted affirmed testimony and substantiating evidence in support of these claims. The tenant acknowledged responsibility for these costs in the tenant's testimony and in the April 29, 2019 letter from the tenant's counsel to the landlord.

The tenant did not submit a plausible explanation for failing to compensate the landlord except to say that the lock replacement cost was "too high".

Based on the evidence, the testimony of the parties, and my assessment of the witness' credibility, I find the landlord has met the burden of proof on a balance of probabilities that the tenant is responsible for these expenses, that the expenses are reasonable, and that the landlord has properly mitigated damages. I therefore grant a monetary award to the landlord for both claims under this heading, that is \$2,838.15 for the replacement of the lock, and \$9,414.59 for outstanding utilities.

Cleaning costs and waste removal

Pool maintenance

These claims are considered together. The landlord submitted uncontradicted affirmed testimony and substantiating evidence in support of these claims. The tenant acknowledged responsibility for the pool maintenance expenses in the April 29, 2019 letter from the tenant's counsel to the landlord. During the hearing, the tenant acknowledged responsibility for \$400.00 of the \$2400.00 claimed for cleaning/disposal costs.

The tenant did not submit a plausible explanation for failing to assume responsibility to compensate the landlord for the cleaning costs except to assert that the tenant left the unit "immaculate" without providing supporting evidence for this unlikely claim.

Based on the evidence, the testimony of the parties, and my assessment of the witness' credibility, I find the landlord has met the burden of proof on a balance of probabilities that the tenant is responsible for these expenses, that the expenses are reasonable, and that the landlord has properly mitigated damages. I therefore grant a monetary award to the landlord for both claims under this heading, that is \$2,400.00 for the cleaning costs and waste removal, and \$2,018.29 for Pool maintenance.

Filing fee

As the landlord has been successful in the landlord's claim, the landlord is granted reimbursement of the filing fee of \$100.00.

Security Deposit

The landlord is granted authorization to apply the security deposit of \$4,500.00 to the monetary award.

Summary

I grant the landlord a monetary award in the amount of **30,271.03**, calculated as follows:

| ITEM | AMOUNT |
|----------------------------------|--------------------|
| Rent for March 2019 | \$9,000.00 |
| Rent for April 2019 | \$9,000.00 |
| Outstanding utilities | \$9,414.59 |
| Replacement of lock | \$2,838.15 |
| Cleaning costs and waste removal | \$2,400.00 |
| Pool maintenance | \$2,018.29 |
| Reimbursement of the filing fee | \$100.00 |
| (less security deposit) | (\$4,500.00) |
| Total Award - Landlord | \$30,271.03 |

Conclusion

The landlord is entitled to a monetary order in the amount of **30,271.03**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court to be enforced as an Order 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: August 25, 2019

Residential Tenancy Branch