



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, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 30, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 16, 2019 (the "Notice"). The Landlord also sought compensation for monetary loss or other money owed, to recover unpaid rent and reimbursement for the filing fee.

The Agent attended the hearing for the Landlord. Nobody attended the hearing for the Tenants. The Agent provided the correct rental unit address which is reflected on the front page of this decision.

The Landlord had sought the following compensation:

- \$25.00 for June late fee;
- \$25.00 for July NSF fee;
- \$1,200.00 for the security deposit;
- \$1,200.00 for July rent; and
- \$2,400.00 for August rent.

The Agent advised that the Tenants vacated the rental unit August 31, 2019 and therefore the Landlord is no longer seeking an Order of Possession. The Agent also advised the Landlord is no longer seeking the security deposit.

I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing packages and evidence were sent to the Tenants by registered mail. The Landlord submitted customer receipts showing packages were sent to each Tenant at the rental unit August 09, 2019. The customer receipts have Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows notices were left August 12th and August 19th. The website shows the recipients were not located at the address August 29th and therefore the packages were returned to the sender.

The Agent testified that the Tenants resided at the rental unit until August 31, 2019. She testified that a move-out inspection was done August 30th and the Tenants participated in this.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). The Tenants cannot avoid service and are deemed to have received the hearing packages and evidence pursuant to section 90 of the *Act*.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started March 01, 2019 and was for a fixed term of 12 months. Rent was \$2,400.00 per month due by the first day of each month. The Agent testified that the Tenants never paid a security deposit. The agreement is signed by the Tenants and for the Landlord.

The tenancy agreement includes a term in the addendum stating that late payments, returned and NSF cheques are subject to a maximum service charge of \$25.00 each.

The Landlord submitted the Notice. It states the Tenants failed to pay \$1,200.00 that was due July 01, 2019. The Agent testified that this was served on the Tenants in person July 16, 2019.

The Landlord submitted evidence showing the Tenants paid \$1,200.00 by cheque July 15, 2019 but that this was returned due to insufficient funds. The Agent testified that the Tenants never re-paid this amount.

The Agent testified that the Tenants never paid August rent so currently owe \$1,200.00 of July rent and \$2,400.00 for August rent.

The Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

In relation to the request for the June late fee, the Agent testified that the Tenants paid June rent on June 07, 2019.

In relation to the request for the July NSF fee, the Agent confirmed this relates to the evidence showing the Tenants' July 15, 2019 cheque for \$1,200.00 was returned due to insufficient funds.

The Landlord submitted a rent ledger showing the June late fee, returned cheque of \$1,200.00 for July, July NSF fee and outstanding balance of \$2,450.00 as of July 23, 2019. This includes the \$1,200.00 security deposit.

Analysis

Section 7 of the *Act* states that, if a tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for loss that results.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy where tenants have failed to pay rent.

Based on the written tenancy agreement, I accept the Tenants were obligated to pay \$2,400.00 in rent each month by the first day of each month.

Based on the undisputed testimony of the Agent, Notice, evidence regarding the July 15, 2019 cheque and rent ledger, I accept that the Tenants failed to pay \$1,200.00 of July rent and all of August rent.

Based on the undisputed testimony of the Agent, I accept that the Tenants did not have authority under the *Act* to withhold rent. Further, I have no evidence before me that they did.

Pursuant to section 26(1) of the *Act*, the Tenants were required to pay \$2,400.00 in rent for each of July and August. I have accepted that the Tenants failed to pay half of July rent and all of August rent. Therefore, the Landlord is entitled to recover \$3,600.00 in rent.

Section 7 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The tenancy agreement sets out that there will be a fee up to \$25.00 for late payments and cheques returned due to insufficient funds.

Based on the undisputed testimony of the Agent and rent ledger, I accept that the Tenants paid June rent late. The term in the addendum of the tenancy agreement applies. The Landlord is entitled to recover the June late fee of \$25.00.

Based on the undisputed testimony of the Agent, evidence regarding the July 15, 2019 cheque and rent ledger, I accept that the Tenants' July 15, 2019 cheque for \$1,200.00 was returned due to insufficient funds. The term in the addendum of the tenancy agreement applies. The Landlord is entitled to recover the July NSF fee of \$25.00.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is entitled to monetary compensation in the amount of \$3,750.00. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$3,750.00 and I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: October 03, 2019

Residential Tenancy Branch