



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 9005 Skier's Rest Lane Wedgewoods
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

In this dispute, the landlord seeks compensation against the tenant for unpaid rent in the amount of \$15,945.21, pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). The landlord also seeks recovery of the filing fee of \$100.00 under section 72.

The landlord applied for dispute resolution on February 19, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 30, 2020. The landlord's agent (hereafter the "landlord") attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No one appeared on behalf of the tenant, a corporation.

Regarding service, the landlord testified that he served the Notice of Dispute Resolution Proceeding package (the "package") on the tenant by way of Canada Post registered mail on February 19, 2020. The tracking number was provided to me. A search of the online Canada Post tracking website indicates that the package was delivered on February 21, 2020 and signed for at 11:02 AM. The package was then processed, and Canada Post has an entry of March 2, 2020 noting "Item on hold at a secure facility." Based on the undisputed evidence of the landlord, I find that the tenant was deemed served in compliance with section 89 of the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties' testimony may necessarily be reproduced.

Issues

1. Is the landlord entitled to compensation as sought?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on March 30, 2018. Monthly rent for the rental unit, an upscale ski resort property, was \$12,000.00. Rent was due on the 20th of the month. A security deposit of \$12,000.00 was paid by the tenant, and the deposit is currently held in trust by the landlord.

The tenant did not pay rent of \$12,000.00 when it was due on April 20, 2018 and informed the landlord by email on April 30, 2018 that they have moved out. The landlord therefore seeks \$12,000.00 for the unpaid rent due April 20 and for 10 days of rent between April 20 and April 30 in the amount of \$3945.00, calculated pro rata, for a total of \$15,945.00.

Submitted into evidence was a copy of the written tenancy agreement, a cheque for \$24,000.00, a copy of the email exchange between the tenant and the landlord referred to above, and, a copy of a corporate registry search document. Also submitted was a completed Monetary Order Worksheet.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due and did not pay rent for the time between when it was due and when the tenant gave notice to end the tenancy. Further, there is no evidence before me that the tenant had a right under the Act to not pay the rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$15,945.12 for unpaid rent.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful, I grant its claim for reimbursement of the filing fee of \$100.00. The total award granted is therefore \$16,945.21.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant's security deposit of \$12,000.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$4,945.21, representing the balance of the award, is issued in conjunction with this Decision.

Conclusion

The landlord's application is granted.

I grant the landlord a monetary order in the amount of \$4,945.21, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 12, 2020

Residential Tenancy Branch