



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0857975 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, MNDCL-S, FFL

Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the notice of hearing and evidence sent by regular mail and email on May 14, 2020. Pursuant to section 89(1) of the *Act*, regular mail is not an accepted method for serving documents, including an application for dispute resolution. Section 89(1)(c) and (d) provides that sending a copy by registered mail is an acceptable means of service.

Pursuant to the Director's Order dated March 30, 2020 email was a permitted method of providing documents including an application for dispute resolution as at May 14, 2020. The relevant portion of the Order provides that a notice of application is deemed served if:

the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the

document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Based on the landlord's testimony and in accordance with section 71 of the Act and the Director's Order of March 30, 2020, I find the tenant is deemed served with the application and evidence on May 17, 2020, three days after email.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

The monthly rent for this tenancy was \$1,650.00 payable on the first of each month. A security deposit of \$825.00 was collected and is still held by the landlord. The tenancy ended sometime in May, 2020 when the tenant abandoned the rental unit without providing notice to the landlord.

The landlord submits that the tenant failed to pay full rent for April, 2020 and no amount for May, 2020. The landlord calculates that the total arrear for this tenancy as at the date of the hearing is \$2,300.00.

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.

I accept the landlord's submission that the tenant failed to pay rent as required under the tenancy agreement and there is an arrear of \$2,300.00 as at the date of the hearing.

While the unpaid rent arises from the months of April and May, pursuant to the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation") and as detailed in Residential Tenancy Policy Guideline 52, if a tenancy has ended prior to a repayment plan being given an arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Accordingly, I issue a monetary award in the landlord's favour for the unpaid rent of \$2,300.00.

As the landlord's application was successful, they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,575.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: September 17, 2020

Residential Tenancy Branch