



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On September 14, 2020 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on November 6, 2020 as a teleconference hearing. The Landlord’s Agent appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 14 minutes before the call ended. 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’s Agent and I were the only persons who had called into this teleconference.

The Landlord’s Agent testified the Application and documentary evidence package was served to the Tenant in person on September 21, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on September 26, 2020, the fifth day after the registered mailing. The Tenant did not submit documentary evidence in response to the Application.

Preliminary Matters

The Landlord's Agent stated that the Tenant is now deceased. The Landlord's Agent stated that he is not aware if the Tenant has an Estate taking care of his affairs, however, the Landlord's Agent stated that he was able to re-rent the rental unit on November 1, 2020, therefore, the Landlord is no longer requesting an order of possession.

During the hearing, the Landlord's Agent referred to an amendment to the Landlord's Application, seeking compensation for damage and cleaning to the rental unit. According to the Residential Tenancy Branch Rules or Procedure 4.1 Amending an Application for Dispute Resolution;

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

In this case, I find that the Landlord did not complete an Amendment to an Application for Dispute Resolution Form. As such, I find that the Landlord's claims for damage and compensation are dismissed with leave to reapply. The hearing continued based on the Landlord's Application for monetary compensation relating to unpaid rent, to retain the Tenant's security deposit, and for the return of the filing fee.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?

3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on July 1, 2005. Rent in the amount of \$2,607.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$850.00, which the Landlord continues to hold. The Landlord's Agent stated that the Tenant passed away on September 29, 2020.

The Landlord testified the Tenant did not pay rent in the amount of \$2,607.00 when due on September 1, 2020. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2020 (the "10 Day Notice") with an effective vacancy date of September 12, 2020. The Landlord's Agent stated that the 10 Day Notice was served by posting it to the Tenant's door on September 2, 2020.

The Landlord's Agent stated that the Tenant paid no rent to the Landlord for September 2020 before passing away on September 29, 2020. The Landlord's Agent stated that the Landlord was unable to re-rent the rental unit until November 1, 2020. As such, the Landlord is seeking monetary compensation in the amount of \$5,214.00 for the loss of rent for September and October 2020. If successful, the Landlord is seeking the return of the filing fee, and to retain the Tenant's security deposit in partial satisfaction of the claim.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

I accept the Landlord's Agent's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay rent owing for September 2020 in the amount of \$2,607.00. I am also satisfied that the Landlord suffered a loss of rent in the amount of \$2,607.00 for the month of October 2020.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$5,214.00**. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the \$850.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$4,464.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$5,214.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$850.00</i>)
TOTAL:	\$4,464.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$4,464.00. The monetary order should be served to the Tenant's Estate as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 06, 2020

Residential Tenancy Branch