



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 19, 2020, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent, utilities and parking, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on December 8, 2020. Only the Landlord's Representatives, L.V., the Residential Property Manager, and D.D., the Assistant Property Manager, called into the hearing. L.V. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:00 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. L.V. testified that they served the Tenant with the Notice of Hearing and the Application on August 21, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

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

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of August 26, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by L.V. and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated, such as when the amount of rent owing has increased from the time of filing the Application to the hearing date. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

L.V. testified that the Tenant failed to pay rent, utilities or parking from the date the Landlord's Application was filed. She confirmed that on November 23, 2020 she sent further evidence to the Tenant via registered mail; this evidence included an updated Monetary Orders Worksheet as well as the Tenant's Ledger confirming the amount owing for rent as of the date of sending the documents.

I find the Tenant would have reasonably anticipated that the Landlord would seek compensation for the full amount of rent, utilities and parking owing as of the date of the hearing. I therefore amend the Landlord's Application to claim the full amount owing as of the date of the hearing.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began March 1, 2016. L.V. testified that monthly rent is currently \$1,729.00. The Tenant is also obligated to pay for utilities in the amount of \$73.00 and parking in the amount of \$175.00 for a \$1,977.00 monthly payment. L.V. confirmed that the Tenant paid a security deposit in the amount of \$798.00.

The Landlord filed a Monetary Orders Worksheet which set out the amount claimed at the time the Application was filed as \$4,244.00; this initial worksheet also referenced the Tenant Ledger (a copy of which was also provided in evidence). The Landlord filed an updated Worksheet and Leger confirming that the Tenant failed to pay rent for September through December 2020. L.V. testified that as of the date of the hearing, the sum of \$9,300.00 was owing for rent, utilities and parking.

L.V. confirmed the Landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The Landlord filed another Application seeking only an Order of Possession and recovery of the filing fee, such that the only request for a Monetary Order was the one contained in the August 19, 2020 Application which was the subject of the hearing before me. I have included the file number for the Landlord's other Application on the unpublished cover page of this my Decision.

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord's Residential Property Manager, and on the balance of probabilities, I find the following.

Pursuant to section 26 of the *Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement.

I accept L.V.'s testimony that the Tenant failed to pay rent, utilities and parking as required by the tenancy agreement. I accept L.V.'s testimony that as of the date of the hearing the Tenant was in arrears of these payments in the amount of \$9,300.00. This testimony was supported by the Landlord's documentary evidence including the Tenant ledger. I therefore find the Tenant breached section 26 of the *Act* and award the Landlord **\$9,300.00** in compensation.

As the Landlord has been successful in this Application, I find, pursuant to section 72 of the *Act*, that the Landlord is also entitled to recover the **\$100.00** filing fee for a total award of **\$9,400.00**.

Pursuant to section 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$798.00 security deposit towards the amounts \$9,400.00 awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$8,602.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant failed to pay rent, utilities and parking as required by the tenancy agreement. The Landlord is entitled to monetary compensation for the amount due in addition to recovery of the filing fee for a total award of \$9,400.00. The Landlord may retain the Tenant's security deposit towards this sum and is granted a Monetary Order for the balance of **\$8,602.00**.

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: December 09, 2020

Residential Tenancy Branch