



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 10, 2020 (the "Application"). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- To recover the filing fee.

The Tenant and Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Agent confirmed the Landlord's name on the Application.

I confirmed with the Agent that the Landlord was seeking the following:

1. \$100.00 for patching walls;
2. \$150.00 for rekeying because the Tenant did not return keys;
3. \$175.00 for carpet cleaning;
4. \$740.50 for unpaid water bills; and
5. \$100.00 for the filing fee.

The Agent confirmed the above but withdrew the request for \$100.00 for patching walls.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package October 23, 2020 and evidence December 15, 2020. The Tenant said he received these later than expected. The Tenant confirmed he had a chance to review the hearing package and did not take further issue with the timing of service of the hearing package. The Tenant testified that he had a chance to review the evidence but did not have a chance to respond to it. I asked the Tenant what he did not have a chance to respond to. The Tenant said he would have called a witness in relation to the rekeying issue. The Tenant confirmed there were no further issues because the Agent withdrew the request for \$100.00 for patching walls.

The Agent testified that the hearing package was sent to the Tenant October 16, 2020 and the evidence was sent December 07, 2020. The Agent provided the tracking number for the evidence package. I looked the tracking number up on the Canada Post website which shows a notice card was left for the Tenant December 14, 2020 and the package was delivered December 15, 2020.

The Tenant acknowledged receiving a notice card for the package December 14, 2020. He testified that he was home and did not hear anyone knock. The Tenant testified that he picked the package up December 15, 2020.

I was satisfied the Landlord's evidence was served in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). However, I told the Agent that, accepting the evidence was sent December 07, 2020, and relying on the deeming provision of the *Act*, section 90(a), the Tenant would be deemed to have received the package December 12, 2020. I told the Agent this was not in accordance with rule 3.14 of the Rules of Procedure (the "Rules") which required the Landlord to serve their evidence such that the Tenant received it not less than 14 days before the hearing. Not less than 14 days before the hearing would have been December 07, 2020, the day the Landlord sent the evidence.

I asked the Agent why the Landlord's evidence was served so late. The Agent testified that this was because of the pandemic, the Landlord's office being open less and the Landlord having less employees. I pointed out to the Agent that the Landlord had three months to serve their evidence and that the evidence is minimal. I note that the Landlord's evidence included the following:

- A Condition Inspection Report from August 31, 2020 (the “CIR”);
- A carpet cleaning invoice dated September 23, 2020;
- A utility bill dated July 24, 2020;
- A demand letter dated August 06, 2020;
- A Tenant Ledger from August 01, 2020 to December 07, 2020;
- Canada Post website information about service of the hearing package delivered October 23, 2020;
- An email from the RTB to the Landlord dated October 16, 2020; and
- The tenancy agreement signed May 14th and 15th, 2019.

The Agent further testified that the Landlord had to obtain bills from the owner of the rental unit, the Landlord’s employees cannot see people, the office is closed, the RTB lost documents on their end and the Landlord sent the package as quickly as they could.

The Agent also referred to Canada Post taking so long. I pointed out to the Agent that the issue is not Canada Post given the evidence was delivered within eight days of it being sent and the Landlord failed to comply with the Rules even based on the deeming provision of the *Act*.

I outlined the possible outcomes of the Landlord’s non-compliance with rule 3.14 of the Rules including that we could proceed with the hearing with or without the evidence or adjourn the hearing. I told the parties I would hear them on this issue. I asked the Tenant what remedy he was seeking. After a discussion about this, the Tenant said he was okay with proceeding with the hearing with the Landlord’s evidence admitted as long as either the Landlord withdrew the request for compensation for rekeying or the hearing was adjourned at the end to allow him to call his witness.

I asked for the Agent’s position on the Tenant’s request. The Agent indicated that she had not been left with much choice and would withdraw the request for compensation for rekeying.

I note that I had not made a decision about an appropriate remedy for the Landlord’s non-compliance with rule 3.14 of the Rules and had asked for the Agent’s position in relation to the remedy sought by the Tenant.

Given the Agent’s comments, the Agent and I had a further discussion about the service issue. The Agent raised concerns about RTB arbitrators, submitted that it is her experience that RTB arbitrators side with tenants often, submitted that this was what

was happening here and that the same issues would not be addressed had the Tenant served his evidence late.

I summarized my view of the situation and explained why I was asking the questions I was. I told the Agent I would hear her on the issue of admission or exclusion of the evidence if her position was that a decision on this should be made. The Agent did not make submissions about this. The Agent confirmed she would withdraw the request for compensation for rekeying. Given this, I considered the request withdrawn.

The Agent testified that the Landlord did not receive the Tenant's evidence. The Tenant testified that he did not serve his evidence on the Landlord because he did not know he was required to. I told the Tenant he was required to and asked for the parties' submissions on whether the evidence should be admitted or excluded. The Tenant had only submitted a copy of the CIR and an email. The Agent agreed admissibility of these was fine.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the Act which allows an arbitrator to assist the parties to settle the dispute. I explained the settlement option to the parties. I told the parties settlement discussions are voluntary. The parties agreed to discuss settlement and a discussion ensued.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I confirmed all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenant agree as follows:

1. The Landlord can keep the \$650.00 security deposit.
2. The Tenant will pay the Landlord an additional \$100.00.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is issued a Monetary Order for \$100.00. If the Tenant does not comply with the above, this Order must be served on the Tenant. If the Tenant does 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: December 22, 2020

Residential Tenancy Branch