



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 MNR-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) attended the hearing; however, the tenant did not attend.

The landlord provided documentary evidence showing that the tenant was served with the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service on October 21, 2020. Filed into evidence was a signed Proof of Service form.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to retain the tenant's security deposit to partially satisfy any monetary award, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing this tenancy began on August 1, 2013, monthly rent at that time was \$1,150, and a security deposit of \$575 being paid by the tenant to the landlord. The landlord filed into evidence a copy of the notice of the latest rent increase form, showing that the monthly rent increased to \$1,367 on August 1, 2019.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord said that the tenancy ended at or near the end of October 2020, by removal by a bailiff.

The landlord's monetary claim is \$7,302, comprised of the unpaid monthly rent for October 2020, and the unpaid monthly rent accumulated during the moratorium on monthly rent payments, in the amount of \$5,935 for the time period of January 18, 2020 to August 17, 2020, due to the Covid-19 pandemic and the state of emergency declared.

The landlord provided the tenant with a repayment plan, as required, for an additional monthly rent installment payment of \$593.50, beginning October 1, 2020. The landlord submitted that the tenant failed to pay the rent for October 2020 and made no payments per the repayment plan. Filed into evidence was a copy of the repayment plan.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section

67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Despite being duly served with the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the tenant failed to attend the hearing. The landlord's evidence is therefore uncontested.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. A legal right may include authorization from an Arbitrator giving you permission to keep all or part of the rent or costs incurred to make an "emergency repair", as defined by the Act.

I find that the landlords submitted sufficient evidence to show that the tenant owed, but did not pay rent of \$1,367 for October 2020, under the terms of the written tenancy agreement and the rent increases during the tenancy.

I also find the landlord submitted sufficient evidence to show the tenant accumulated a rent deficiency of \$5,935 during the time period of March 18, 2020 to August 17, 2020 and has not paid any installments on this deficiency owed under the repayment plan.

I therefore find the landlord has established a monetary claim of \$1,376 for unpaid rent for October 2020 and the outstanding rent deficiency of \$5,935 owed from March 18, 2020 to August 17, 2020.

The landlord is also entitled to recovery of the \$100 filing fee.

The security deposit of this tenancy will be off-set from the award made herein.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$6,827.00 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for October 2020	\$1,367.00
2. Unpaid rent deficiency as stated above	\$5,935.00
3. Filing fee	\$100.00
4. Less security deposit	-\$575.00
TOTAL MONETARY ORDER	\$6,827.00

Should the tenant fail to pay the landlord this amount without delay, the order must be served to the tenant for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

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: February 4, 2021

Residential Tenancy Branch