



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-PP, MNRL-S, FFL**

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent and losses pursuant to section 67; 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 they served the application for dispute resolution and evidentiary materials on the tenant in person on October 22, 2020. Based on the undisputed testimony of the landlord I find that the tenant was duly served with the materials on that date in accordance with sections 88 and 89 of the *Act*.

There was a previous decision under the file number on the first page of this decision where the landlord was issued an Order of Possession. The landlord testified that this tenancy has ended and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began in April 2019. The monthly rent was \$1,900.00 payable on the first of each month. The tenant also rented storage lockers at a rate of \$45.00 per month. A security deposit of \$950.00 was collected at the start of the tenancy and is still held by the landlord. A copy of the signed tenancy agreement was submitted into evidence.

The tenancy ended sometime in November 2020 in accordance with an Order of Possession in the landlord's favour issued at the previous hearing. The tenant failed to pay monthly rent or the storage fees for several months and there is an arrear of unpaid rent and storage fees of \$12,115.00 as at February 9, 2021, the date of the hearing. The landlord submitted into evidence a copy of the tenant ledger showing the transactions for this tenancy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there was an enforceable tenancy agreement wherein the tenant was obligated to pay rent in the amount of \$1,900.00 and storage fees of \$45.00 monthly. I accept the undisputed evidence of the landlord that the tenant failed to pay rent and storage fees for several months during the tenancy and there is an arrear of \$12,115.00.

I accept the evidence of the landlord that the tenant has vacated the rental unit and this tenancy has ended. Therefore, while the rental arrear arises from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park

Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Accordingly, based on the evidence, I find that the landlord is entitled to a monetary award in the amount of \$12,115.00.

As the landlord's application was successful the landlord is also entitled to recover the 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 \$950.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$11,265.00. 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: February 9, 2021

Residential Tenancy Branch