



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S

Introduction

The landlord seeks compensation against their former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act").

An agent for the landlord attended the hearing on February 22, 2021 at 1:30 PM, which was held by teleconference. The tenant did not attend.

The landlord gave evidence that the tenant was served with the Notice of Dispute Resolution Proceeding package ("package") by way of Canada Post registered mail on November 16, 2020. A copy of the registered mail tracking number indicated, on the Canada Post tracking website, that the tenant picked up the package on November 16, 2020 at 3:03 PM. The landlord served a copy of his amended application on the tenant by way of Canada Post registered mail on February 5, 2021. However, it appears, based on the tracking number and the tracking website, that the tenant has not picked up the second delivery as of February 13, 2021; a Final Notice card was left.

Based on the above evidence I am satisfied and do find that the tenant was served with the Notice of Dispute Resolution Proceeding in accordance with the Act.

Issue

Is the landlord entitled to compensation?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on May 1, 2005 and ended on December 2, 2020 when bailiffs executed a writ of possession. The writ of possession was based on an order of possession issued by a Residential Tenancy Branch adjudicator on November 2, 2020.

Monthly rent was \$2,177.00, due on the first day of the month. The tenant paid a security deposit of \$762.50 which the landlord currently holds in trust. A copy of the written tenancy agreement was submitted into evidence.

The landlord seeks total compensation of \$13,389.35 comprised of the following:

1. rent arrears of \$4,779.40, comprising rent for October 2020 and November 2020, a repayment amount of \$212.70 for October 2020 and a repayment amount of \$212.70 for November 2020, in addition to interest on arrears of \$27.00;
2. execution of the writ of possession bailiff service costs of \$8,257.95; and,
3. rental unit cleaning costs of \$325.00.

The landlord submitted the following documents into evidence: two Monetary Order Worksheets, a copy of a Condition Inspection Report, an invoice for the bailiff services, the tenant's rent ledger, a copy of the November 2, 2020 order of possession, three Notices of Rent Increase, and two registered mail receipts. In respect of the cleaning costs claimed, the landlord testified that in order to minimize losses, he cleaned the rental unit himself; this took considerable time. It was, he remarked, one of the dirtiest rental units that he'd ever seen in his fifteen years as a landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

A. Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support his submission, that the tenant owes \$4,779.40 plus interest of \$27.00 in unpaid rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$4,806.40.

B. Claim for Bailiff Service Costs

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

In this dispute, the landlord hired the services of a bailiff in order to enforce an order of possession, and on which a court-issued writ of possession was executed.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$8,257.95.

C. Claim for Cleaning Costs

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the landlord took it upon himself to clean the rental unit in order to minimize costs to clean the rental unit, which he described as being particular dirty. It took him several days to clean the rental unit, and his labour costs he estimated at \$325.00. This is, I find, a more-than-reasonable amount to be claimed for cleaning.

Taking into consideration all undisputed the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$325.00.

Summary of Award, Retention of Security Deposit, and Monetary Order

I award a total of \$13,389.35 in compensation to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$762.50 in partial satisfaction of the above-noted award.

The balance of the award is issued by way of a monetary order in the amount of \$12,626.85. As explained to and understood by the landlord, this order will need to be served on the tenant. If the tenant cannot be located, the landlord may need to consider hiring a “skip tracer” or a “skip tracing” service in order to serve the tenant.

Conclusion

I grant the landlord’s application and award compensation in the amount of \$13,389.35.

The landlord is authorized to retain the tenant’s security deposit of \$762.50 in partial satisfaction of the award.

I grant the landlord a monetary order in the amount of \$12,626.85, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 22, 2021

Residential Tenancy Branch