



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BTC STUDENT HOUSING KELOWNA
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on February 2, 2021, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent and N.S.F. fees as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on November 22, 2021. Only the Landlord's Agent, C.W., called into the hearing. The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:42 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 Agent and I were the only ones who had called into this teleconference.

Branch records indicate that the matter was originally scheduled for June 4, 2021. As the Landlord's agent was not available on that date, the parties mutually agreed to adjourn the June 4th date. As per that agreement the parties were advised by email of the continuation date of 1:30 p.m. on November 22, 2021. The Landlord's agent confirmed she spoke with the Tenant's counsel who further confirmed they, and the Tenant, were aware of the November 22, 2021 date although counsel was not retained to attend.

I find the Tenant was informed by the Branch of the reconvened hearing date on November 22, 2021 and proceeded in their absence.

The Landlord's Agent was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Agent confirmed

their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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 Agent's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Agent and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this fixed term tenancy began September 1, 2020 and was to continue until August 27, 2023. The Tenant was obligated to pay \$1,125.00 per month in rent. The Tenant did not move into the rental unit when the tenancy was to begin and attempted to find a sublet as well as asking the Landlord to assist in finding a replacement.

The Agent stated that the Landlord found a replacement tenant for May 1, 2021. Despite the rental unit remaining empty until this time, in the within application the Landlord only sought unpaid rent from September 2020 to February 1, 2021 for a total \$5,625.00 in unpaid rent.

The Landlord also sought \$125.00 in N.S.F. fees, representing \$25.00 per month for five months as, despite being informed the Tenant wished to end the tenancy, the Landlord continued attempting to withdraw money from the Tenant's account by way of pre-authorized payments.

The Landlord also sought recovery of the filing fee.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities I find as follows.

Pursuant to section 26 of the *Act* a tenant must pay rent when rent is due. I find the Tenant was obligated to pay monthly rent in the amount of \$1,125.00 pursuant to the

tenancy agreement and section 26. I further find the Tenant failed to pay rent when rent was due such that the Tenant breached the agreement and the *Act*.

A tenant who agrees to a fixed term tenancy is potentially liable for the rent due for the entire fixed term; in this case the Landlord was able to re-rent the unit such that the Landlord minimized their rental losses. Although the unit was not re-rented until May, the Landlord's Application indicated that the Landlord sought compensation for only five months: September, October, November, December 2020, and January 2021.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Rules of Procedure*. Rule 2.2 provides that a claim is limited to what is stated on the application. As such, I find the Landlord is entitled to the sum of **\$5,625.00** representing loss of five months' rent.

I am not satisfied the Landlord is entitled to recover the N.S.F. fees. As noted, a party seeking monetary compensation from the other party has a duty to minimize their losses. In this case, the evidence establishes that the Tenant informed the Landlord before even moving in that they would not proceed with the tenancy. As such, I find that it was not reasonable for the Landlord to continue to attempt to withdraw funds from the Tenant's account and thereby incur bank fees. I therefore dismiss this portion of the claim.

As the Landlord has been substantially successful, I award them recovery of the **\$100.00** filing fee for a total award of **\$5,725.00**.

Conclusion

The Landlord's request for monetary compensation from the Tenant is granted in part. The Landlord is entitled to the sum of **\$5,725.00** representing compensation for unpaid rent for September, October, November and December 2020 and January 2021 as well as recovery of the \$100.00 filing fee. In furtherance of this I grant the Landlord a Monetary Order in the amount of **\$5,725.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: November 22, 2021