Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HERKUL FLOORING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on July 20, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Retention of the Tenant's security deposit;
- Compensation for monetary loss or other money owed;
- Recovery of unpaid/lost rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on February 3, 2022, and was attended by the Landlord, the Landlord's witness, and the Tenant. All testimony provided was affirmed. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, and both parties acknowledged receipt of each other's documentary evidence. As the parties stated that they had no concerns about the method or timing of service for the above noted documents, I therefore find that they were sufficiently served for the purposes of the *Act* and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). The hearing therefore proceeded as scheduled and I accepted all of the documentary evidence before me from the parties for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over myself and any other participants, and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure,

recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses listed in the Application.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I advised the parties that as a previous decision made by an arbitrator at the Residential Tenancy Branch (the Branch) on July 21, 2021, dealt with this tenancy and some of the matters claimed in this Application, that I would be unable to reconsider or re-decide those matters, as they are *res judicata*.

Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to *res judicata*, the courts have found that:

> "…the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."
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> Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache* and *Vey Gamache v. Mark Megyesi* and *Century 21 Bob Sutton Realty Ltd.,* Prince George Registry, Docket No. 28394 dated 15 November, 1996,

> quoted with approval the above passage from the judgement of *Henderson v. Henderson,* (1843), 67 E.R. 313.

I have read the previous decision, a copy of which was submitted by the Tenant, and I find that the previous matters/issues that are also relevant to the Application before me today, have previously been decided as follows:

- The tenancy began on November 1, 2020;
- The tenancy ended on November 5, 2020;
- The Tenant did not have authority under the *Act* to end the tenancy on or before November 5, 2020; and
- The Tenant is entitled to $3,900.00, double the amount of the $1,950.00 security deposit.

As a result of the above, I dismissed the Landlord's claim for retention of the security deposit without leave to reapply. I also advised the parties that as I had no ability to re-decide the above noted matters, I would not hear evidence and testimony on them at the hearing or allow them to re-argue those matters at this hearing.

Preliminary Matter #2

When confirming the matters claimed by the Landlord in the Application, the Landlord indicated that their claim for compensation for monetary loss or other money owed was meant to be for $2,950.00 not $1,950.00, and was actually for losses suffered in October of 2020, as they declined other potential tenants who were interested in renting the rental unit earlier than the Tenant, in order to sign the tenancy agreement with the Tenant, who ultimately did not follow-through with the tenancy. In the Application the Landlord stated the following under their claim for compensation for monetary loss or other money owed, which I have reproduced as written:

> *The tenant did not give the landlord at least one months written notice. A notice was not given the day before the rent was due in a given month, the tenancy ends the following month. Thus the tenancy ended Dec.*

The above noted wording is identical to the wording used for the Landlord's $1,950.00 claim for unpaid rent. At the hearing the Tenant stated that they were unaware that the Landlord was claiming anything for October of 2020. The Rules of Procedure allow parties to amend an Application for Dispute Resolution up to 14 days prior to the hearing, by filing an Amendment to the Application for Dispute Resolution with the

Residential Tenancy Branch, and serving a copy on the respondent(s). I advised the Landlord that although rule 4.2 of the Rules of Procedure also allows parties to amend an Application for Dispute Resolution at the hearing in very limited circumstances, this requires a finding by the arbitrator that the respondent(s) could reasonably have anticipated the amendment, which I do not find is the case here, given the wording used by the Landlord in the Application. As a result, I declined to amend the Application at the hearing to include a claim for $2,925.00 in compensation for monetary loss or other money owed for October of 2020. As a result, the hearing proceeded only on the Landlord's claim for December 2020 rent and recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid/lost rent for December 2020?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month (periodic) tenancy commenced on November 1, 2020, that rent in the amount of $3,900.00 is due on the 28th day of each month, and that a security deposit in the amount of $1,950.00 was required. At the hearing the parties agreed that these terms are correct. The Tenant also submitted proof that they paid the $1,950.00 security deposit by retransfer on October 19, 2020, and that they paid $3,900.00 in rent for October 2020 on October 28, 2020.

In a previous decision from the Residential Tenancy Branch (the Branch) dated July 31, 2021, a copy of which was provided for my review and consideration by the Tenant, an arbitrator already decided the following:

- The tenancy began on November 1, 2020;
- The tenancy ended on November 5, 2020;
- The Tenant did not have authority under the *Act* to end the tenancy on or before November 5, 2020; and
- The Tenant is entitled to $3,900.00, double the amount of the $1,950.00 security deposit.

The Landlord states that the Tenant ended their tenancy early on November 5, 2020, without authority to do so, causing them to lose half a month of rent for December 2021.

The Landlord stated that although they received the Tenant's written notice on November 5, 2020, stating that they intended to end the tenancy that date, conversations continued with the Tenant for several days thereafter, in relation to whether or not the tenancy was actually going to end. The Landlord stated that once they determined that the Tenant would not occupy the rental unit and continue the tenancy, which was several days after they received the Tenant's written notice, they advertised the unit for re-rental. The Landlord stated that as they were not getting much interest in the posting, they also emailed all of the people who had expressed interest in the rental unit back in October of 2020 when it had first been posted, to see if any of them were still interested. The Landlord stated that this strategy was ultimately successful, and the rental unit was re-rented for December 15, 2020, at the same monthly rental rate of $3,900.00. The Landlord stated that as the new tenants paid pro-rated rent for only half the month of December 2020, the Tenant owes the remaining $1,950.00.

The Tenant attempted to re-argue matters already heard and decided by the previous arbitrator on July 21, 2021, regarding whether or not they had authority to end their tenancy on November 5, 2020. I advised the Tenant that as discussed at the outset of the hearing, I could not re-hear or re-decide those matters and asked the Tenant to present any other arguments they have for why they do not owe rent for December 2020. The Tenant stated that as they first emailed the Landlord on November 2, 2020, that they were going to end their tenancy, and subsequently served their written notice a few days later on November 5, 2020, the Landlord had sufficient time to re-rent the unit and they should therefore not be entitled to any rent for December 2020.

Analysis

Based on the tenancy agreement before me, the affirmed testimony of the parties at the hearing, and the previous decision dated July 31, 2021, I am satisfied that a periodic tenancy to which the *Act* applies existed between the parties which started on November 1, 2020, and ended on November 5, 2020. I am also satisfied that rent in the amount of $3,900.00 was due on the 28th day of each month.

Section 7 of the *Act* states that 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 for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-

compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

In the July 21, 2021, decision an arbitrator determined that the Tenant did not have authority under the *Act* to end their tenancy on November 5, 2020, by way of their written notice to end tenancy dated the same date. As a result, and based on the documentary evidence and testimony before me, I am satisfied that the Tenant breached sections 44 and 45(1) of the *Act* by ending their tenancy on November 5, 2020, without proper authority under the *Act* to do so.

I am also satisfied that the Landlord suffered a loss of half a month of rent in December 2020 as a direct result of the Tenant's failure to properly end the tenancy in accordance with the *Act*, and that despite their best efforts, the Landlord was unable to re-rent the rental unit until December 15, 2020. As a result, and pursuant to sections 7 of the *Act*, I therefore award the Landlord recovery of $1,950.00 in lost rent for December 2020. As the Landlord was at least partially successful in their Application, I also award them recovery of the $100.00 filing fee. Pursuant to section 67 of the *Act*, I therefore grant the Landlord a Monetary Order in the amount of $2,050.00, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$2,050.00**. The Landlord is provided with this Order in the above terms and 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 4, 2022

Residential Tenancy Branch