



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #110050527: CNC, FFT
File #110051586: OPC, MNDCL-S, FFL

Introduction

The Tenant files an application for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order under s. 47 to cancel a One-Month Notice to End Tenancy dated September 16, 2021 (the “One-Month Notice”); and
- Return of their filing fee pursuant to s. 72.

The Landlord files a cross-application for the following relief under the *Act*:

- An order under s. 55 for an order for possession pursuant to the One-Month Notice;
- An monetary order under s. 67 for unpaid rent; and
- Return of their filing fee pursuant to s. 72.

J.G. appeared as agent for the Landlord. M.R. appeared on her own behalf as Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advises that she served the Notice of Dispute Resolution for her application on the Landlord by way of email. The Landlord acknowledges receipt of the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution for the Tenant’s application was sufficiently served on the Landlord pursuant to s. 71(2) of the *Act*.

The Tenant advised that her evidence was served on the Landlord by email and that the evidence comprised of videos. The Landlord denies receipt of the same and confirmed receiving a sheet via email saying that the videos had been provided to the Residential Tenancy Branch. Email does not appear to be an approved form of service as contemplated by s. 89 of the *Act* and s. 43 of the Regulations. However, the Landlord has acknowledged receipt of the Notice of Dispute Resolution and raised no objections to the use of email. Review of the emails provided by the Tenant to the Residential Tenancy Branch as proof of service do not make clear that the videos were ever served on the Landlord. As the Tenant failed to demonstrate service of the videos on the Landlord as required by the *Act* and the Rules of Procedure, I do not admit them into evidence.

The Landlord's agent advised that their Notice of Dispute Resolution and evidence was served on the Tenant by way of registered mail sent on January 19, 2022. The Tenant denies receipt of the Landlord's application materials. The Landlord provides a tracking number for the registered mail package, which shows the package is being returned to the Landlord after it was not picked up by the recipient.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled under s. 89 of the *Act* to serve their application materials by way of registered mail. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. I find that the Landlord served their Notice of Dispute Resolution and evidence by way of registered mail sent on January 19, 2022 in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials on January 24, 2022.

Settlement Agreement

Pursuant to section 63 of the *Act*, I may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement

may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of their dispute.

The parties were advised that they were under no obligation to enter into a settlement agreement. Both parties agreed to the following partial settlement:

1. That the tenancy will end by way of mutual agreement on March 31, 2022.

I confirmed that the Landlord and the Tenant entered into the settlement agreement voluntarily, free of any coercion or duress. I confirmed each detail of the settlement with the Landlord and the Tenant. Both parties confirmed having understood each term of the agreement and acknowledged it represented a full, final, and binding settlement with respect to the Tenant's claim under s. 47 and the Landlord's claim under s. 55.

Pursuant to the parties' partial settlement, I shall grant the Landlord an order for possession effective at 1:00 PM on March 31, 2022.

The hearing proceeded on the sole issue of the Landlord's monetary claim for unpaid rent.

Issue(s) to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Are either parties entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details of the tenancy:

- The Tenant began to occupy the rental unit on November 1, 2019.
- Rent of \$1,600.00 is due on the 1st day of each month.
- The Landlord holds a security deposit of \$800.00 in trust for the Tenant.

A copy of the written tenancy agreement was provided as evidence.

The Landlord's agent advised that the Tenant failed to pay rent on November 1, 2021, December 1, 2021, January 1, 2022, and February 1, 2022. The Landlord says no payments were received from the Tenant at all over that period.

The Tenant confirmed that she did not pay rent as described by the Landlord.

The Tenant says she undertook some work at the property, including general maintenance and yard work. The tenancy agreement indicates that it is the Landlord's responsibility to cut the grass, but the Tenant says she took over this responsibility after the Landlord had been tardy in their responsibilities when cutting the grass. No copies of receipts for repairs or other evidence were provided by the Tenant.

Analysis

The Landlord seeks a monetary order for unpaid rent.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).

2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

There is little dispute between the parties. Rent of \$1,600 ought to have been paid on the first of every month and the Tenant confirmed that she paid no rent at all over the relevant period of November 2021 to February 2022.

The Tenant says that she undertook general maintenance work and yard work at the property. These are not considered emergency repairs under s. 33 and the process set out under that section permitting rent reduction for emergency repairs does not appear to have been followed. Further, there is no evidence showing an accounting of the cost of these repairs that would justify the withholding of rent under s. 33 of the *Act*. None of the other exclusions set out under *Act* as described above apply.

Accordingly, I find that the Tenant failed to pay rent when due as per her obligation under the tenancy agreement. I am satisfied that the Landlord suffered a corresponding loss due to the Tenant's breach of the tenancy agreement and that they could not mitigate their damages as the Tenant continues to reside in the rental unit.

I find that the Landlord is entitled to a monetary award in the following amount:

| Month | Rent Due | Rent Paid | Difference |
|------------------------|------------|-----------|-------------------|
| November 2021 | \$1,600.00 | \$0.00 | - \$1,600.00 |
| December 2021 | \$1,600.00 | \$0.00 | - \$1,600.00 |
| January 2022 | \$1,600.00 | \$0.00 | - \$1,600.00 |
| February 2022 | \$1,600.00 | \$0.00 | - \$1,600.00 |
| Total Rent Owed | | | \$6,400.00 |

As the Landlord was successful in their application, I find that they are entitled to the return of the filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's filing fee of \$100.00.

I further exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit of \$800.00 in partial satisfaction of the total amount owed.

Conclusion

Pursuant to the parties' settlement with respect to the overlapping claims under ss. 47 and 55 related to the One-Month Notice, I grant the Landlord an order for possession. The Tenant shall provide vacant possession of the rental unit by no later than **1:00 PM on March 31, 2022**.

With respect to the Landlord's claim for monetary compensation, I make a total award taking the following into account:

| Item | Amount |
|---|-------------------|
| Landlord's entitlement for unpaid rent (November 2021 to February 2022) | \$6,400.00 |
| Tenant to pay Landlord's filing fee pursuant to s. 72(1) | \$100.00 |
| Less the security deposit to be retained by the Landlord pursuant to s. 72(2) | -\$800.00 |
| TOTAL | \$5,700.00 |

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$5,700.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 10, 2022

Residential Tenancy Branch