



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rose Hotels Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, OPM, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 17, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For an Order of Possession based on a Mutual Agreement dated October 31, 2021 (the “Mutual Agreement”)
- To keep the security deposit
- To recover the filing fee

M.S.T. (the “Agent”) appeared at the hearing as agent for the Landlord. Legal Counsel for the Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent and Legal Counsel who did not have questions when asked. I told the Agent and Legal Counsel they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

Legal Counsel advised at the start of the hearing that they may call a witness during the hearing; however, Legal Counsel advised at the end of the hearing that they would not call the witness.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

Legal Counsel advised that the hearing package and some of the Landlord's evidence were sent to the Tenant at the rental unit by registered mail on November 19, 2021. Legal Counsel advised that Tracking Number 040 relates to this package.

I looked Tracking Number 040 up on the Canada Post website which shows the package was unclaimed.

Legal Counsel advised that the hearing package and all of the Landlord's evidence, including an obituary and rent ledger, were served on the Tenant in person February 13, 2022, and that the Proof of Service signed by the Tenant relates to this.

Based on the undisputed submissions of Legal Counsel and the Canada Post website information, I find the Tenant was served with the hearing package and some of the Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). The Tenant cannot avoid service by failing to pick up registered mail and is deemed pursuant to section 90(a) of the *Act* to have received the package November 24, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed submissions of Legal Counsel and the Proof of Service, I find the Tenant was again served with the hearing package in accordance with section 89(1)(a) of the *Act* on February 13, 2022. Further, I find the Tenant was served with all of the Landlord's evidence, including the obituary and rent ledger, in accordance with section 88(a) of the *Act* on February 13, 2022. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service of the additional evidence.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent and Legal Counsel were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony and submissions of the Agent and Legal Counsel. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to an Order of Possession based on the Mutual Agreement?

3. Is the Landlord entitled to keep the security deposit?

4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

Legal Counsel provided the following submissions.

There is a written tenancy agreement between the parties. The tenancy started April 01, 2019 and is a month-to-month tenancy. Rent is \$1,300.00 per month due on the first day of each month. The Tenant paid a \$650.00 security deposit and no pet damage deposit.

The Tenant signed the Mutual Agreement and the signed letter from E.G.R. in evidence confirms this. The Landlord is seeking an Order of Possession effective two days after service on the Tenant.

There is \$6,159.19 outstanding in rent and monies owing for use and occupancy of the rental unit from October of 2021 to present. The Tenant did not have authority under the *Act* to withhold rent.

The Landlord submitted the following relevant documentary evidence:

- The Mutual Agreement
- Deposit slip
- Rent ledger
- Signed statement from E.G.R. confirming they witnessed the Tenant sign the Mutual Agreement
- Proof of Service

Analysis

Section 44 of the *Act* states:

44 (1) A tenancy ends only if one or more of the following applies...

(c) the landlord and tenant agree in writing to end the tenancy...

I accept that the Tenant signed the Mutual Agreement ending the tenancy October 31, 2021 based on the Mutual Agreement, signed statement from E.G.R. and undisputed submissions of Legal Counsel.

I find the tenancy ended October 31, 2021 pursuant to the Mutual Agreement and section 44(1)(c) of the *Act*.

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(d) of the *Act* and I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 57 of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I accept that the Tenant currently owes the Landlord \$6,159.19 in outstanding rent and overholding compensation based on the submissions of Legal Counsel and in part on the rent ledger. I accept that the Tenant did not have authority under the *Act* to withhold rent at any point. I find the Landlord is entitled to \$6,159.19 in outstanding rent and overholding compensation.

Given the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$6,259.19. The Landlord can keep the \$650.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$5,609.19 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$6,259.19. The Landlord can keep the \$650.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$5,609.19. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 11, 2022

Residential Tenancy Branch