



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, MNRL, MNDCL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of hearing and materials by registered mail sent on September 15, 2021 to a forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on September 20, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act. I note that pursuant to Residential Tenancy Policy Guideline 12 the failure or refusal of a party to accept or pick up an item served by registered mail, does not override the deeming provisions.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in September 2020. Monthly rent was \$700.00 payable on the first of each month. A security deposit of \$350.00 and a Key deposit of \$100.00 were collected at the start of the tenancy and are still held by the landlord. The parties prepared a move-in condition inspection report at the start of the tenancy noting no issues.

The tenant failed to pay monthly rent as required on July 1, 2021, making partial payment of \$600.00. The tenant failed to make any payment on August 1, 2021. The landlord issued a 10 Day Notice on August 2, 2021, indicating the rental arrear of \$800.00. The tenant failed to make payment of the arrear and vacated the rental unit in accordance with the 10 Day notice by its effective date of August 12, 2021.

The tenant failed to attend a move-out condition inspection despite the landlord providing the tenant at least 2 opportunities to attend. The landlord conducted the inspection without the tenant and noted some issues with the rental unit requiring cleaning, work and garbage disposal. A copy of the inspection report was provided into evidence.

The landlord submits they incurred some costs for the work done to restore the rental unit to its pre-tenancy condition. The landlord provided some third-party invoices and receipts and says the total cost of the work is \$360.89.

The landlord was able to find a new occupant for the rental unit commencing August 16, 2021 to mitigate their rental income losses. The landlord seeks the arrear for July 2021 of \$100.00 and half the rent for the month of August 2021 in the amount of \$350.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the undisputed evidence of the landlord that there was an effective tenancy agreement obligating the tenant to make rent payments in the amount of \$700.00 on the first of each month. I accept the evidence of the landlord that the tenant breached the agreement by failing to make payments as required for July and August, 2021.

I further accept that the landlord took reasonable steps to mitigate their losses by finding a new occupant to take possession of the rental unit in the middle of August 2021. Despite their efforts the landlord still incurred a loss of \$450.00 of unpaid rent. Accordingly, I issue a monetary award in that amount.

I am satisfied with the evidence of the landlord including the condition inspection reports prepared in accordance with the *Act* and regulations, their undisputed testimony and documentary evidence of receipts and invoices that the rental unit required some work at the end of the tenancy and they incurred costs for performing the work. I am satisfied that the total amount of the landlord's losses are \$360.89 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit and key deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$460.89, representing the unpaid rent, damages and recovery of filing fees and allows the landlord to retain the deposits for this tenancy. 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: March 11, 2022

Residential Tenancy Branch