



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, MNDCL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they were not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agent confirmed the landlord's email address for service of this decision and order.

The agent testified that the tenant was served with this application for dispute resolution and the landlord's evidence via registered mail on February 24, 2022. A Canada Post receipt for same was entered into evidence. I find that the tenant was deemed served with the above documents on March 1, 2022, five days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The agent testified that the landlord discovered that the tenant moved out on April 7, 2022. The agent testified that the tenant moved out sometime in the first week of April 2022.

As this tenancy has already ended, I dismiss the landlord's application for an Order of Possession as it is no longer required.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agents' claims, and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on October 1, 2020 and has ended. Monthly rent in the amount of \$1,150.00 was payable on the first day of each month from the start of this tenancy until January 2022. Rent from February 1, 2022 onwards was \$1,167.00 due on the first day of each month. The agent entered into evidence a Notice of Rent Increase which states that the tenant's rent

increased from \$1,150.00 per month to \$1,167.00 per month effective February 1, 2022. The agent testified that the tenant paid a security deposit of \$575.00 to the landlord. A written tenancy agreement and addendum was signed by both parties and a copy was submitted for this application.

The agent testified that the landlord discovered that the tenant skipped out on the subject rental property on April 7, 2022, when the landlord attended at the subject rental property for an inspection. The agent testified that the tenant did not inform the landlord of their moving plans and did not provide the landlord with a forwarding address.

The agent testified that in October of 2021 the tenant was "away for a while" and let his hydro lapse. The agent testified that the food in his fridge went bad and the smell emanated into the hallway. The agent testified that the tenant was contacted via telephone about the issue, and the tenant requested the landlord to clean the fridge out and that he would pay for this service. The agent testified that the tenant was charged \$100.00 for the fridge to be cleaned out and that the tenant has of yet not paid this bill. A receipt for the cleaning in the amount of \$100.00 was entered into evidence. The agent testified that the landlord is seeking this amount from the tenant.

The agent testified that the tenant did not pay rent from January 2022 forward. The agent testified that the subject rental property was re-rented for April 15, 2022. The agent testified that the landlord is seeking unpaid rent for January to March 2022 and ½ months' rent for April 2022. The agent entered into evidence a ledger from September 23, 2020 to March 2, 2022 which shows that no rent was paid from January 2022 to March 2, 2022.

The landlord's application for dispute resolution states that the landlord is seeking damages for unpaid rent/over holding from January to April 2022.

The agent testified that the tenant was signed up for pre-authorized debits and that the debits for the following months came back NSF and incurred a \$25.00 fee per occurrence:

- August 2021,
- November 2021,
- December 2021,
- January 2022, and
- February 2022.

The agent entered into evidence a ledger confirming the above testimony. The ledger shows that rent for August, November and December 2021 was late and that no rent for January and February 2022 were paid.

Section B. of the Tenancy Agreement Addendum states:

Late payments, returned and non-sufficient fund cheques (N.S.F.) are subject to a maximum service charge of \$25.00 each, or the then current rate charge for such services by the Bank, whichever is greater...

Analysis

I accept the agent's undisputed testimony that rent for January 2022 was \$1,150.00 per month and that rent for February 2022 forwards was \$1,167.00 per month. I find that the agent's testimony is supported by the tenancy agreement and the Notice of Rent Increase entered into evidence.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00 on January 1, 2022 and rent in the amount of \$1,167.00 from February 1, 2022 forwards. I find that rent was due on the first day of each month.

Based on the undisputed testimony of the agent and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord rent from January 2022 until April 7, 2022, the date the landlord's discovered that the tenancy ended. Rent owed is as follows:

- January 2022- **\$1,150.00**
- February 2022- **\$1,167.00**
- March 2022- **\$1,167.00**
- April 2022- $\$1,167.00(\text{rent}) / 30 (\text{days in April}) = \$38.90 (\text{daily rate}) * 7 (\text{days tenancy ongoing}) = \mathbf{\$272.30}$

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of

rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Based on the agent's undisputed testimony and the ledger entered into evidence, I find that the tenant was late paying rent on August, November, and December of 2021 and January and February of 2022 and incurred a \$25.00 fee for each of the above months.

Based on the tenancy agreement addendum entered into evidence, I find that the landlord is entitled to charge a \$25.00 fee for each of the above months. Pursuant to section 67 of the *Act*, I award the landlord \$125.00.

Section 32(2) of the *Act* states:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I accept the agent's undisputed testimony that the tenant let the hydro electricity lapse which caused the food left in the fridge by the tenant to spoil and smell, contrary to section 32(2) of the *Act*. I accept the agent's undisputed testimony that the tenant was not able to clean the fridge and requested the landlord to do so on his behalf. I find that the tenant's breach of section 32(2) of the *Act* resulted in a loss to the landlord of \$100.00 as evidence by the cleaning receipt. Pursuant to section 67 of the *Act*, I award the landlord \$100.00 for fridge cleaning.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

I accept the agent's undisputed testimony that the tenant has not provided the landlord with a forwarding address.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$575.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$3,756.30
Late/NSF fee	\$125.00
Fridge cleaning fee	\$100.00
Filing Fee	\$100.00
Less security deposit	-\$575.00
TOTAL	\$3,506.30

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: May 30, 2022

Residential Tenancy Branch