



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IRONCLAD PROPERTIES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

JD attended as agent for the landlord ("the landlord"). The tenant DB attended. The parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenant CH did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 55 minutes to allow the tenant CH the opportunity to call. The teleconference system indicated only the landlord, the tenant DB and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant CH was provided.

Preliminary Issue

At the beginning of the hearing, a party to an unrelated claim called in error into the hearing.

After investigation, the Arbitrator informed the caller of the error and the correct date/time for their hearing; they disconnected from the call. The hearing continued with the landlord, the tenant DB and me.

Service of Documents

The tenant DB acknowledged receipt of the registered mail from the landlord addressed to tenant CH but denied receipt of the registered mail to themselves.

As the tenant CH did not attend the hearing and the tenant DB denied receipt of the registered mail addressed to DB, the landlord provided affirmed testimony that the landlord served each tenant separately with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the residential address for each tenant being the residence of the unit on October 28, 2021. Further to section 90 of the Act, the mail is deemed received Act five days later, that is, on November 2, 2021.

The landlord provided the Canada Post Tracking Numbers and a copy of a printout from Canada Post. The printout form confirmed the mailing date as set out above as well as the pickup date for both envelopes on November 3, 2021, by the tenant DB who signed the receipt for both.

I find the tenant DB's denial of receipt of the registered mail sent to them not to be believable. I find it more likely true than not that the tenant DB received the registered mail addressed to them for which they signed their name to the receipt as testified by the landlord. I only give weight to the landlord's evidence in this regard.

Further to the landlord's testimony and supporting documents, I find the landlord served the tenants DB and CH with the Notice of Hearing and Application for Dispute Resolution on November 3, 2021, pursuant to sections 89 and 90.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord submitted a copy of the tenancy agreement and testified as follows. The tenants entered into a tenancy agreement with the landlord which began on March 31, 2021, for \$2,308.00 monthly payable on the first of the month. The building in which the unit was located was sold effective September 1, 2022, and rent was payable thereafter to the new owner. The landlord testified the security deposit was transferred to the new owner and the tenancy continued.

The landlord testified the tenants did not pay rent for the months of July and August 2021. The landlord submitted a copy of the tenant ledger and a demand letter to the tenants which contained the outstanding amount claimed.

The landlord claimed reimbursement of the filing fee.

The landlord summarized their claim as follows:

ITEM	AMOUNT
Rent July 2021	\$2,308.00
Rent August 2021	\$2,308.00
Reimbursement filing fee	\$100.00
TOTAL	\$4,716.00

The tenant DB testified as follows. They acknowledged the background to which the landlord testified. However, DB stated that because of a dispute with the tenant CH, DB moved out of the unit on June 11, 2021, and was prohibited by court order from entering the unit thereafter. DB did not live in the unit again.

DB testified that they had informed the landlord of the situation by email, provided a copy of the order, and requested that their name be removed from the tenancy agreement. He denied he is responsible for the outstanding rent as claimed.

The tenant submitted no documentary evidence.

The landlord denied that the tenant DB had provided any such order or that they had information as claimed by the tenant. They requested a Monetary Order against both tenants.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations, or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided believable testimony supported in all material aspects by well-organized and comprehensive documents.

I accept the landlord's testimony that in the two months before the landlord sold the building, the tenants had not paid rent as claimed and the outstanding rent was \$4,616.00. The landlord has submitted credible supporting documentary evidence such as a tenant ledger. I find the landlord has met the burden of proof with respect to the amount claimed in outstanding and accrued rent.

I find the landlord has met the burden of proof with respect to the claim against the tenants for the outstanding rent.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Rent July 2021	\$2,308.00
Rent August 2021	\$2,308.00
Reimbursement filing fee	\$100.00
TOTAL	\$4,716.00

I grant a monetary award to the landlord against the tenants in the amount of **\$4,716.00**

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$4,716.00** against the tenants.

This Monetary Order must be served on the tenants. The Order may be filed and enforced in the Courts of the Province of British Columbia.

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: June 06, 2022

Residential Tenancy Branch