



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with two Applications for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on February 28, 2022, and March 26, 2022, seeking:

- Recovery of unpaid rent;
- Monetary compensation for lost rent;
- Monetary compensation for the cost of repairs to the rental unit;
- Compensation for monetary loss or other money owed;
- Authorization to withhold the Tenant's security and pet damage deposits; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on September 13, 2022, at 1:30 P.M. (Pacific Time), and was attended by the Landlord, who provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that they believe the Notice of Dispute Resolution Proceeding (NODRP) for both Applications, a copy of the substituted service decision from the Residential Tenancy Branch (Branch) dated July 8, 2022, and all the documentary

evidence before me on behalf of the Landlord, was sent to the Tenant by registered mail on July 9, 2022, at the address approved for service in the substituted service decision.

A copy of the registered mail receipt dated July 9, 2022, and a picture of an envelope addressed to the Tenant at the address approved for service in the substituted service decision, with the registered mail tracking number attached, was provided for my review and consideration. The Landlord testified that the registered mail was delivered to the Tenant on July 12, 2022, according to the Canada Post tracking system, and that a signature for delivery was captured. As a result, I find that the Tenant was sufficiently served with the Applications, the Notice of Hearing, and the documentary evidence before me from the Landlord for the purpose of the Act in the Rules of Procedure, on July 12, 2022.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP for both Applications was correct, and I note that the Landlord had no difficulty attending the hearing on time using this information. As the Landlord and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was sufficiently served with the NODRP's for the purpose of the Act on July 12, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on September 13, 2022, despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure, which states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Although the teleconference remained open for the full duration of the hearing no one attended the hearing on behalf of the Tenant.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them and their agents at the email addresses confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to monetary compensation for lost rent?

Is the Landlord entitled to monetary compensation for the cost of repairs to the rental unit?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to withhold the Tenant's security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one-year fixed term tenancy commenced on November 1, 2019, and rent in the amount of \$2,665.00 was due on the first day of each month. During the hearing, the Landlord stated that rent was not increased during the tenancy and that the tenancy continued on a periodic basis after the end of the fixed term. The tenancy agreement also states that rent includes the first \$40.00 of heating costs each month and that the Tenant will pay the balance of any monthly heating costs. The tenancy agreement states that a security deposit in the amount of \$1,332.50 was required and although the Landlord stated that this amount was paid by the Tenant at the start of the tenancy, they could not be sure if this full amount was still retained in trust by their agents.

The Landlord stated that in addition to the rental unit, the Tenant also rented a separate storage locker at a monthly rate of \$40.00. A copy of a locker lease agreement matching this amount was submitted for my review and consideration. The Landlord stated that the Tenant had been significantly behind on rent and storage locker fees, and subsequently abandoned the rental unit sometime near the end of February of

2022, without notice to the Landlord or their agents and without providing a forwarding address in writing, after service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord stated that at the time the tenancy ended the Tenant owed \$22,910.00 in outstanding rent, \$440.00 in outstanding storage locker fees, and \$267.94 in unpaid heat bills. The Landlord stated that the rental unit was left in extremely poor condition at the end of the tenancy and required significant cleaning and repairs before it could be re rented. As a result, the Landlord also sought \$650.00 in cleaning and repair costs and \$2,665.00 in lost rent for March of 2022. Finally, the Landlord sought recovery of both \$100.00 filing fees and authorization to retain the Tenants security deposit towards any amounts owed, should the agents for the Landlord still retain this amount.

Although the Landlord thought that move-in and move-out condition inspections and reports were completed as required, they stated that they could not be sure, as these would have been completed by their agents. In support of their Applications the Landlord submitted a copy of the tenancy agreement and an addendum to the tenancy agreement, a storage locker lease, copies of letters and promissory notes from the Tenant to the Landlord and or their agents, a locker rental Ledger, an estimate for cleaning and repair costs, and photographs of the state of the rental unit at the end of the tenancy.

Although the teleconference remained open for the full duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Section 37(1)(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

From the uncontested affirmed testimony of the Landlord and the documentary evidence before me, I am satisfied on a balance of probabilities that the Tenant failed to leave the rental unit reasonably clean and undamaged, except for pre-existing damage, at the end of the tenancy, as required by section 37(2)(a) the Act. I am also satisfied that the Landlord incurred the costs sought at the hearing to return the rental unit to the

required level of repair and cleanliness after the end of the tenancy. As a result, I grant the Landlord the \$650.00 sought for cleaning and repair costs.

Section 26 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 the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. As there is no evidence before me that the Tenant had a right under the Act to deduct all or a portion of the rent, I find that they did not. I have already found above that rent in the amount of \$2,665.00 was due on the first day of each month under the tenancy agreement and I accept the Landlord's uncontested documentary evidence and affirmed testimony which demonstrates to my satisfaction that the Tenant did not pay rent for a significant period of time prior to the end of the tenancy and that the Tenant currently owe \$22,910.00 in outstanding rent for the period of April 1, 2020 to February 28, 2022. As a result, I grant the Landlord's claim for recovery of this amount. I also grant the Landlord's claims for \$267.94 in unpaid utility bills and \$440.00 in unpaid storage locker fees, as I am satisfied that the Tenant owed these amounts under the Act and/or their tenancy agreement and that the Landlord is therefore entitled to their recovery.

In their Applications the Landlord also sought recovery of lost rent for March of 2022 in the amount of \$2,695.00 due to the state in which it was left by the Tenant and the fact that the Tenant abandoned the rental unit sometime in February of 2022, without prior notice to the Landlord or their agents. I am satisfied that the Tenant breached section 37(2)(a) of the Act when they failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, that the tenant also breached section 44 of the Act when they abandoned the rental unit, and that the Landlord suffered a loss of rent in March of 2022 as a result. Based on the above I therefore find that the Landlord is entitled to recover lost rent in the amount of \$2,695.00 for the month of March 2022, pursuant to section 7 of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #3 and #5.

As the Landlord was successful in the above noted claims, I also grant them recovery of one filing fee in the amount of \$100.00, pursuant to section 72(1) of the Act. Although the Landlord incurred a second \$100.00 filing fee when they filed their second Application on March 26, 2022, as the Landlord was entitled under the Rules of Procedure to amend their original Application to include the additional claims made in the second application, at no additional cost, I therefore declined to grant them recovery of the second filing fee.

Having made the above findings, I will now turn to the matter of the security deposit. Although the Landlord stated at the hearing that the \$1,332.50 security deposit was paid by the Tenant at the start of the tenancy, they acknowledged that they could not be sure if the full amount of this deposit was still held in trust by their agents. The Landlord stated that the Tenant did not leave a forwarding address when they abandoned the rental unit in February of 2022, and as a result I find that the requirement to either return the security deposit to the Tenant or file a claim against it under section 38(1) of the Act has not been triggered. Based on the Landlord's affirmed and uncontested testimony and the documentary evidence before me, I am satisfied by the Landlord on a balance of probabilities that the tenancy ended on or before February 28, 2022, as the Tenant abandoned the rental unit without notice, after having been served with a notice to end tenancy for unpaid rent. Branch records indicate that the Landlord filed the Application seeking retention of the security deposit on February 28, 2022. Although I find that the Landlord may have extinguished their right to claim against the security deposit in relation to damage to the rental unit pursuant to section 24(2) of the Act, as the Landlord could not be sure at the hearing about whether or not their agents had complied with the requirements set out under the Act and the regulations with regards to move-in and move-out condition inspections and reports, as the Applications related to more than claims for damage, I find that the Landlord was nonetheless entitled to retain the Tenant's security deposit(s) pending the outcome of the Applications.

As a result of the above, I find that the Landlord is entitled to compensation from the Tenant in the amount of \$27,062.94. As the Landlord was unsure at the hearing whether their agents still retain the full amount of the Tenants \$1,332.50 security deposit in trust, I therefore grant the Landlord a Monetary Order pursuant to section 67 of the Act for this full amount. Should the Landlord or their agents still hold all or a portion of the above noted security deposit in trust, they may retain that amount in partial repayment of the \$27,062.94 I find is owed by the Tenant to the Landlord, and enforce only the remaining balance of the Monetary Order owed against the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$27,062.94**. 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. Should the Landlord or their

agents still hold all or a portion of the above noted security deposit in trust, they may retain that amount in partial repayment of the \$27,062.94 I find is owed by the Tenant to the Landlord, and enforce only the remaining balance of the Monetary Order owed against the Tenant.

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: September 14, 2022

Residential Tenancy Branch