



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on January 25, 2022, seeking:

- Recovery of unpaid rent;
- Monetary compensation for the cost of repairs to the rental unit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on September 29, 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 named in the Application D.W. (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 stated that the Notice of Dispute Resolution Proceeding (NODRP), a copy of the substituted service decision from the Residential Tenancy Branch (Branch) dated February 9, 2022, and all the documentary evidence before me on behalf of the Landlord, was sent to the Tenant by email on February 19, 2022, at the email address approved for service in the substituted service decision.

Branch records indicate that the NODRP and the substituted service decision were sent to the Landlord by email on February 17, 2022, for service by February 20, 2022. As a result, I find that the Tenant was deemed served with the Application, the Notice of Hearing, the substituted service decision, and the documentary evidence before me from the Landlord for the purpose of the Act and the Rules of Procedure, on February 22, 2022, three days after they were sent by email.

As set out in Residential Tenancy Policy Guideline (Policy Guideline) #13 Co-tenants are jointly and severally responsible for they payment of rent when it is due and for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. Although the tenancy agreement before me lists two tenants as Co-tenants under the tenancy agreement, it does not state that the Co-tenants are not jointly in severally liable. I therefore find that they were and that it was within the Landlord's right to file the claim against only the D.W., who is the Tenant named in the Application. 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 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 for the purpose of the Act on February 22, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on September 29, 2022, despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure. 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 myself 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 at the email addresses listed in the Application and 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 the cost of repairs to the rental unit?

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 July 31, 2020, and that rent in the amount of \$3,900.00 was due on the first day of each month. During the hearing, the Landlord stated that rent was not increased during the tenancy. The tenancy agreement states that a security deposit in the amount of \$500.00 was required and at the hearing the Landlord stated that although this was paid, it was used by the Tenant in July of 2022, to pay a portion of their rent.

The Landlord stated that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) with an effective date of July 31, 2022, which they did not dispute, but that the Tenant remained in the rental unit until October 1, 2022. The Landlord stated that the Tenant did not pay any rent for August or September, but they are not seeking the recovery of August rent, as the Tenant was entitled to one month's compensation for having been served with the Two Month Notice. As a result, the Landlord sought only \$3,900.00 in rent/compensation for overholding, for September of 2022.

The Landlord stated that the Tenant(s) had also damaged a door and window during the tenancy and sought \$700.70 in replacement and repair costs. Finally, the Landlord sought recovery of the \$100.00 filing fee.

In support of their Application and testimony, the Landlord submitted copies of email and text correspondence with the Tenant(s), photographs, receipts, invoices, and

argument summaries. 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 Tenants 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 after the end of the tenancy. As a result, I grant the Landlord the \$700.70 sought at the hearing for repair costs.

Based on the documentary evidence before me and the Landlord's affirmed an uncontested testimony, I am satisfied that rent in the amount of \$3,900.00 was due on the first day of each month under the tenancy agreement. 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.

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. Section 57(3) of the Act states that a landlord may claim compensation from an over holding tenant for any period that the over holding tenant occupies the rental unit after the tenancy is ended. I am satisfied by the Landlord's testimony that the tenancy ended on July 31, 2022, as a result of the Two Month Notice and pursuant to section 49(9) of the Act. I am also

satisfied that rent in the amount of \$3,900.00 was due on the first day of each month under the tenancy agreement, that the Tenant remained in the rental unit until October 1, 2022, and that the Tenant did not pay rent for September of 2022. As a result, I grant the Landlord's claim for recovery of unpaid rent/compensation for overholding for the month of September 2022 in the amount of \$3,900.00.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$4,700.70, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,700.70**. 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: October 5, 2022

Residential Tenancy Branch