



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on March 10, 2022, seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the security deposit.

The hearing was convened by telephone conference call on November 7, 2022, at 1:30 P.M. (Pacific Time), and was attended by the Landlord's agent S.D. (the Agent), who provided affirmed testimony. No one appeared on behalf of the Tenant. The Agent 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 Agent testified that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, and the documentary evidence before me on behalf of the Landlord, was sent to the Tenant on March 17, 2022, by registered mail at the forwarding address provided by the Tenant. The Agent provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. Registered mail tracking information for the above noted

registered mail package was also submitted which shows that the registered mail was sent on March 17, 2022, that a notice card was left on March 21, 2022, and that it was delivered on March 22, 2022. Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email on March 16, 2022. Based on the above, I find that the Landlord served the Tenant with the NODRP and the documentary evidence before me on behalf of the Landlord for the purpose of section 59(3) of the Act and rule 3.1 Rules of Procedure.

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. Rule 7.3 of the Rules of Procedure 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. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was served with the NODRP for the purpose of the Act on March 22, 2022, I therefore commenced the hearing as scheduled, despite the absence of the Tenant. Although the teleconference remained open for the full duration of the 11-minute hearing, no one attended the hearing on behalf of the Tenant.

The Agent 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 Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent 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 Agent 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 Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address 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 compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retention of the security deposit?

Background and Evidence

The one-year fixed term tenancy agreement in the documentary evidence before me indicates that the fixed term commenced on February 1, 2021, that rent in the amount of \$1,380.00 is due on the first day of each month, and that a security deposit in the amount of \$690.00 was required. A parking agreement indicates that the Tenant was also required to pay \$50.00 each month for parking. During the hearing, the Agent stated that the \$690.00 security deposit is still held in trust and that rent at the time the tenancy ended was \$1,527.57. A parking agreement showing that parking was increased to \$75.00 per month effective March 1, 2021, and an #RTB-7 Notice of Rent Increase were submitted for my consideration in support of this testimony.

The Agent stated that a mutual agreement was entered into with the Tenant ending the tenancy on February 28, 2022, and that a move-out condition inspection was completed with the Tenant on March 4, 2022. The Agent stated that the Tenant failed to pay rent for February of 2022, in the amount of \$1,527.57, and sought recovery of this amount. The agent also sought recovery of 3 NSF fees in the amount of \$25.00 each, as permitted under the tenancy agreement as they stated that the Tenant's rent was returned due to non-sufficient funds in September and December of 2021, and February of 2022. The Agent stated that the Tenant provided their forwarding address in writing by e-mail on March 4, 2022, and agreed in writing in this same email that the Landlord could keep the security deposit towards any amounts owed.

Various documents were submitted in support of the Application and testimony, including but not limited to a monetary order worksheet, a copy of the ledger, email communications between the Tenant and Landlord, copies of written notices to the Tenant regarding outstanding amounts owed, condition inspection reports, the tenancy

agreement, a parking agreement, an #RTB-7 Notice of Rent Increase, and the mutual agreement to end a tenancy.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I find that a tenancy to which the Act applies existed between the parties, which ended on February 28, 2022. I also find the following:

- that rent in the amount of \$1,527.57 was due under the tenancy agreement at the time the tenancy ended;
- that the Tenant failed to pay rent for February of 2022;
- that the tenancy agreement permits the Landlord to charge a \$25.00 late/NSF fee each month that rent is late or returned as NSF;
- that the Tenant owes 3 late fees in the amount of \$25.00 each;
- that the Tenant provided their forwarding address in writing by email on March 4, 2022; and
- that the Tenant agreed in writing via email on March 4, 2022, that the Landlord could retain their security deposit towards any amounts owed.

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 for February of 2022, I find that they did not.

Sections 7(1)(d) and 7(2) of the regulations state that a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for that fee. Having reviewed the tenancy agreement in the documentary evidence before me I am satisfied as set out above that the tenancy agreement permits the Landlord to charge a \$25.00 NSF fee.

As a result of the above and as there is no evidence before me to the contrary, I therefore grant the Landlord the \$1,527.57 sought in unpaid rent for February 2022, and the \$75.00 for NSF fees. As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Having made these findings, I will now turn to the matter of the security deposit. As there is no evidence before me that the Landlord extinguished their rights in relation to the security deposit, I therefore find that they did not. I am also satisfied that the Landlord filed the

Application seeking retention of the security deposit within the timeline set out under section 38(1) of the Act, even though they were not required to do so pursuant to section 38(4)(a) of the Act.

Pursuant to sections 38(4)(a) and 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$690.00 security deposit in partial repayment of the above noted amounts owed.

As a result of the above, I find that the Landlord is entitled to a Monetary Order pursuant to section 67 of the Act in the amount of \$1,012.57; \$1,527.57 in rent for February of 2022, \$75.00 in NSF fees, and \$100.00 for recovery of the filing fee, less the \$690.00 security deposit, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to sections 38(4)(a) and 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$690.00 security deposit. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,012.57**. 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 Branch under Section 9.1(1) of the Act.

Dated: November 07, 2022

Residential Tenancy Branch