



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on July 22, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Unpaid Rent;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on December 13, 2022, and was attended by the Landlord. 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, to call witnesses, and to make submissions at the hearing. All testimony provided was affirmed.

The Landlord was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (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 me 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 confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing, as well as any documentary evidence intended to be relied upon by the applicant. As the Tenant did not attend the hearing, I confirmed

service of these documents as explained below. The Landlord provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application for Dispute Resolution and the Notice of Hearing, as well as the evidence package, were sent to the Tenant on April 22, 2022, by registered mail at the forwarding address provided in writing by the Tenant at the end of the tenancy. The registered mail tracking number and the Tenant's forwarding address have been recorded on the cover page of this decision.

The Landlord stated that the Tenant did not provide a postal code as part of their forwarding address, and when they attempted to look it up in preparation for sending the registered mail, they discovered that the exact address given did not exist. As a result, they used the postal code for the most closely located residential address to the one given by the Tenant as their forwarding address. The Landlord stated that the package was returned to sender as unclaimed, at which point they sought an order of substituted service from the Residential Tenancy Branch (Branch) allowing them to serve by email, which they did.

The substituted service decision dated December 1, 2022, states that the Landlord's request was denied, however, I am satisfied based on the affirmed and undisputed testimony of the Landlord that they used the forwarding address provided in writing to them by the Tenant at the end of the tenancy, to send the NODRP and the documentary evidence before me, to the Tenant by registered mail on April 22, 2022. I find that the Landlord was entitled to rely on the forwarding address provided to them in writing by the Tenant as a valid address for service, despite the fact that the Tenant either knowingly or inadvertently provided an inaccurate address. I therefore deem the registered mail received five days later on April 27, 2022. Branch records indicate that the NODRP was sent to the Landlord by e-mail on April 20, 2022. As a result, I am satisfied that the Tenant was deemed served by registered mail in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

Further to this, I am also satisfied by the Landlord's affirmed and undisputed testimony that they and the Tenant routinely corresponded by email during the tenancy and that the NODRP and the documentary evidence before me was sent to the Tenant via email. Although the adjudicator dismissed the Landlord's request for substituted service in their December 1, 2022, decision, as that decision was rendered as part of an ex parte process, I find that I was in receipt of different and more compelling evidence, the affirmed testimony of the Landlord at the hearing. As a result, I am satisfied that the Tenant was deemed sufficiently served for the purposes of the Act and the Rules of

Procedure, despite the above noted substituted service decision, three days after the email was sent, pursuant to section 71(2)(b) and (c) of the Act, and section 44 of the regulations. However, I warned the Landlord at the hearing that deemed service is a rebuttable provision as articulated in Residential Tenancy Policy Guideline (Policy Guideline) #12.

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 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 deemed served with the NODRP for the purpose of the Act and the Rules of Procedure by both registered mail and email, I therefore commenced the hearing as scheduled at 1:30 P.M. on December 13, 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 40-minute hearing, no one attended the hearing on behalf of the Tenant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, a copy of the decision and any orders issued in their favor will be emailed to them at the email address confirmed in 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?

Background and Evidence

The Landlord stated that rent at the time the tenancy ended was \$2,800.00 per month and that the Tenant agreed at the end of the tenancy that the landlord could retain the \$1,400.00 security deposit for partial payment of February 2021 rent. The Landlord stated that the last cheque written by the Tenant for the \$1,400.00 balance owed for February 2021 rent and \$421.00 in utilities owed for October and November of 2020, was cancelled by the Tenant. As a result, the Landlord sought recovery of \$1,821.00 for February 2021 rent and October and November 2001 utilities. The Landlord submitted a photograph of the cheque they said was cancelled by the Tenant.

The Landlord also sought the recovery of \$977.00 in outstanding utilities billed on or after December 1, 2021, and submitted an accounting of these costs for my review. Finally, the Landlord stated that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy as required, and as a result they had to spend many hours cleaning the rental unit themselves, at a cost of \$170.00 and had to pay \$150.00 for garbage removal. The Landlord submitted a garbage removal invoice for my review. Overall, the Landlord sought \$3,218.00 for unpaid rent, unpaid utilities, cleaning and garbage removal costs, and recovery of the filing fee paid for the Application.

Although the Landlord stated that the new occupants of the rental unit were not happy with the level of cleanliness of the rental unit, and therefore it had to be re-cleaned, as they paid cash for this cleaning and submitted no proof of the amount, they withdrew this portion of their claim amount at the hearing.

Analysis

I accept the Landlord's undisputed and affirmed testimony that rent was \$2,800.00, that the Tenant permitted them to retain the \$1,400.00 security deposit at the end of the tenancy as partial payment for February 2021 rent, and that the Tenant never paid the remaining \$1,400.00 owed for February 2021 rent.

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 this Act to deduct all or a portion of the rent. As there is no evidence before me that the Tenant has the right to deduct any amount of rent for February of 2021, I find that they did not. As a result, I find that the Landlord is entitled to \$1,400.00 for unpaid February 2021 rent. Section

7(1) of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Based on the affirmed and undisputed testimony of the Landlord, I am also satisfied that the Tenant owes the Landlord \$1,398.00 in outstanding utilities under the tenancy agreement and that the Landlord is therefore entitled to recovery of that amount.

Finally, section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. I accept the Landlord's affirmed and undisputed testimony that the rental unit was not left reasonably clean at the end of the tenancy by the Tenant, resulting in \$220.00 in garbage removal and cleaning costs. As a result, I also award the Landlord recovery of this amount. As the Landlord was successful in their Application, I award 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 \$3,218.00, 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 **\$3,218.00**. 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: December 13, 2022

Residential Tenancy Branch