



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding G AND M TOTOS HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that on October 26, 2022 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on October 11, 2022 and October 26, 2022 was sent to the Tenant with the initials "JM", via registered mail, at the rental unit. She stated that the package was returned to the sender by Canada Post. She stated that these documents were sent again to "JM", via email, sometime in late October of early November. The Tenant stated that he received these documents from the Landlord, via email.

As "JM" received the aforementioned documents were received by "JM", I find that he received notice of these proceedings and that the evidence should be accepted as evidence for these proceedings.

The Agent for the Landlord stated that on October 26, 2022, the Dispute Resolution Package was sent to the Tenant with the initials "TM", via registered mail, at the rental unit. The Agent for the Landlord stated that this package was returned to the sender by Canada Post. She stated that she believes "TM" vacated the rental unit on October 15, 2022. As the "TM" was not living in the rental unit on October 26, 2022, I cannot

conclude that he was served with notice of these proceedings in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*.

The Agent for the Landlord stated that the Dispute Resolution Package was sent again to "TM", via email, sometime in late October of early November . The Landlord submitted no evidence to establish that the Landlord had authority to serve hearing documents to "TM" via email.

Section 89(1)(f) of the *Act* permits a landlord to serve an Application for Dispute Resolution to a tenant by "any other means of service provided for in the regulations". Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

As there is insufficient evidence to establish that "TM" provided the Landlord with his email address as a service address, I cannot conclude that he was served with the Dispute Resolution Package in accordance with section 89(1)(f) of the *Act*. As there is insufficient evidence to establish that "TM" received the documents sent to him by email, I cannot conclude that he was sufficiently served with these documents.

As the Landlord has failed to establish that "TM" was served with hearing documents, the Agent for the Landlord was advised that I am unable to proceed with the hearing in the absence of "TM". The Agent for the Landlord asked that the Application for Dispute Resolution be amended to remove "TM" as an Applicant and the Application for Dispute Resolution was amended accordingly.

As the Application for Dispute Resolution was amended to remove "TM" as an Applicant, I am able to proceed with the hearing in the absence of "TM". Any Order granted as a result of these proceedings will not name "TM".

On January 04, 2023 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to "JM", via email, on January 05, 2023. As the Tenant acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or unpaid utilities and to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord and “JM” agree that:

- this tenancy began on December 01, 2020;
- “JM” agreed to pay monthly rent of \$1,250.00 by the first day of each month;
- a security deposit of \$625.00 was paid;
- \$625.00 was paid for rent for August of 2022;
- \$625.00 was paid for September of 2022;
- No rent was paid for October of 2022;
- On August 30, 2022 a One Month Notice to End Tenancy for Cause was emailed to “JM”, which declared that the unit must be vacated by September 30, 2022; and
- “JM” vacated the rental unit on August 15, 2022.

The Agent for the Landlord stated that “TM” vacated the rental unit on October 15, 2022. “JM” stated that he does not know when “TM” vacated the rental unit.

The Agent for the Landlord stated that “TM” was living in the rental unit at the invitation of “JM”. She stated that the “TM” was asked to submit an application to be added to the written tenancy agreement between the Landlord and “JM” but he did not do so, so the Landlord considered him an occupant.

“JM” agreed that he allowed “TM” to live in the rental unit and that “TM” did not sign a tenancy agreement with the Landlord.

The Landlord is seeking a monetary Order of \$1,875.00 in rent that is still due for the period between September 01, 2022 and October 15, 2022.

Analysis

On the basis of the undisputed evidence, I find that “JM” entered into a tenancy agreement with the Landlord that required “JM” to pay monthly rent of \$1,250.00 by the first day of each month.

On the basis of the undisputed evidence, I on August 30, 2022 the Landlord sent “JM” a One Month Notice to End Tenancy for Cause, via email. As “JM” acknowledged receiving the One Month Notice to End Tenancy for Cause, I find that it was sufficiently served to the “JM”. I therefore find that this tenancy ended on September 30, 2022 pursuant to the One Month Notice to End Tenancy for Cause that was received by JM”.

On the basis of the undisputed evidence, I find that \$650.00 of the rent that was due for August of 2022 and \$650.00 of the rent that was due for September of 2022 was not paid. As “JM” was required to pay rent on August 01, 2022 and September 01, 2022, pursuant to section 26(1) of the *Act*, I find that “JM” must pay \$1,300.00 in outstanding rent to the Landlord.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that “TM”, who was permitted to live in the rental unit by “JM”, did not vacate the rental unit until October 15, 2022.

As “JM” did not ensure that the “TM” vacated the rental unit by September 30, 2022, I find that “JM” is obligated to pay overholding rent for the period between October 01, 2022 and October 15, 2022, in the amount of \$625.00.

I find that the Landlord’s application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,975.00, which includes \$1,675.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the security deposit of \$625.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,350.00. In the event “JM” does not comply with this Order, it may be served “JM”, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 20, 2023

Residential Tenancy Branch