



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KBK NO 51 VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

The Application for Dispute Resolution (the Application) was filed by the Landlord under the Residential Tenancy Act (the Act), on April 21, 2022, seeking:

- Recovery of \$8,268.75 in compensation for damage caused by the Tenant, their pets, or their guests;
- Compensation in the amount of \$2,500.00 for monetary loss or other money owed; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 1:30 PM on January 5, 2023, and was attended by two agents for the Landlord V.P. and M.D.G. (Agents) and their assistant C.C., all of whom provided affirmed testimony. No one attended on behalf of the Tenant. The participants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (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 participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure 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 the Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified in the hearing that the Notice of Dispute Resolution Proceeding package (NODRP), which includes the Application and the Notice of Hearing, was sent to the Tenant by registered mail at the rental unit address on May 4, 2022. A copy of the registered mail receipt and the completed registered mail address label were provided for my review. The Agents stated that they checked the registered mail tracking, and the package was delivered on May 5, 2022. The Agents stated that the Tenant was subsequently removed from the rental unit by a bailiff on June 8, 2022, as the Landlord had received an Order of Possession in relation to a different Application, but that the NODRP was sent to and received by the Tenant at the rental unit well in advance of their removal, and that the Tenant was aware of the hearing and date.

Based on the uncontested documentary evidence and affirmed testimony before me, I find that the NODRP was served on the Tenant by registered mail on May 4, 2022. Residential Tenancy Branch (Branch) records indicate that the NODRP was emailed to the Landlord on May 2, 2022. Based on the above, I am satisfied that the Landlord sent the NODRP to the Tenant as required by section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agents and their assistant had no difficulty attending the hearing on time using this information. 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. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

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

At the request of the Agents, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email.

Preliminary Matters

The Rules of Procedure state that the respondent must be served with a copy of the evidence intended to be relied upon at the hearing by the applicant. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified in the hearing that the documentary evidence before me was sent to the Tenant by registered mail at the rental unit address on April 8, 2022, May 6, 2022, and October 22, 2022. Copies of the registered mail receipts and the completed registered mail address labels were provided for my review. The Agents stated that they checked the registered mail tracking, and the May 6, 2022, package was delivered on May 5, 2022. No delivery information was provided for the April 8, 2022, package. Although the Agents acknowledged that the October 22, 2022, package was sent to the rental unit after the Tenant had vacated, they stated that the Tenant had not provided a forwarding address and they hoped that the registered mail would be forwarded if the Tenant had set up mail forwarding. The Agents stated the October 22, 2022, package which contained several photographs, and two invoices was ultimately returned to sender.

Based on the uncontested and affirmed testimony and documentary evidence before me, I deem the April 8, 2022, registered mail received on April 13, 2022, in accordance with section 90(a) of the Act and accept that the May 6, 2022, registered mail was served on May 9, 2022, the date the Agents stated it was delivered according to tracking information. As a result, I have accepted the documentary evidence contained in these packages for consideration. However, I am not satisfied that the rental unit address constituted a valid address for the Tenant at the time the registered mail was sent on October 22, 2022, as the Tenant was removed from this address by a bailiff on June 8, 2022, and in any event, the Agents stated that this registered mail package was undelivered and returned to sender. As a result, I have excluded the documentary evidence contained in this package from consideration as I find that it would be administratively unfair and contrary to both the Rules of Procedure and the principles of natural justice to accept it for consideration as it was neither sent to a valid address for service nor received by the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, their pets, or their guests?

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

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Agents stated that the Tenant vandalized numerous areas of the building in which their rental unit was located, on various occasions, including walls, the doors of other residents, building doors, the elevator, and the concierge desk. In addition, they stated that the Tenant had spread rice, litter, and garbage in common areas and thrown fruit syrup onto building property and was ultimately evicted and removed by bailiffs as a result. The Agents submitted substantial documentary evidence in support of these claims including but not limited to letters to the Tenant, a large number of photographs from security cameras depicting the Tenant vandalizing the building, a previous decision wherein the Landlord was granted an Order of Possession, and quotes for cleaning and repair costs.

The Agents stated that the actual total costs were lower than the quoted costs of cleaning and repairs, and therefore sought only the actual reduced amount at the hearing totalling \$10,025.13; \$1,341.38 for cleaning, \$393.75 for repairs to the concierge desk, \$8,190.00 for repairs to doors, walls, and other common property, and \$100.00 for recovery of the filing fee.

Analysis

Section 32(2) of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Section 32(3) of the Act also states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant.

Based on the undisputed documentary evidence and testimony before me, which I find to be substantial, credible, and compelling, I am satisfied that the Tenant caused the damage and uncleanliness alleged by the Landlord and Agents.

Section 7 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 and that the landlord or tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. I am satisfied that the Tenant breached section 32 of the Act by first causing the damage and uncleanliness, then by subsequently failing to clean and repair it and/or pay for the cleaning and repair costs sought by the Landlord prior to filing the Application. As there is no evidence that the costs incurred by the Landlord to clean and repair the property are objectively unreasonable and as I have already found above that the repair and cleaning costs incurred are a direct result of the Tenant's breach of section 32 of the Act, I therefore grant the Landlord the \$9,925.13 sought for recovery of cleaning and repair costs incurred.

As the Landlord was successful in their claims, I also 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 \$10,025.13 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 **\$10,025.13**. 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: January 5, 2023

Residential Tenancy Branch