



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL MNDCL FFL**

Introduction

This hearing was reconvened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation for monetary loss or other money owed by the Tenant pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The original hearing of the Application was held on November 7, 2022 ("Original Hearing"). The Landlord and Tenant attended the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding and Evidence

At the Original Hearing, the Landlord stated she served the Notice of Dispute Resolution Proceeding ("NDRP") and her evidence ("Landlord's Evidence") on the Tenant by registered mail on March 17, 2022. The Landlord stated the Tenant abandoned the rental unit on or about January 7, 2022 and he did not provide her with his forwarding address. The Landlord stated the address she used for mailing was the Tenant's work address that the Tenant provided her at the time the parties entered into the tenancy agreement on or about August 17, 2021.

The Tenant stated he was laid off from work and he did not receive the NDRP or the Landlord's Original Evidence. The Tenant stated that he received an email from the Residential Tenancy Branch ("RTB") regarding this proceeding. The Tenant stated he called the RTB and was provided with a courtesy copy of the NDRP. The records of the RTB confirm the Tenant called the RTB on November 4, 2021, being three days before the Adjourned Hearing. The Landlord stated there were email communications between her and the Tenant that indicated the Tenant had received the NDRP and the Landlord's Evidence.

Rules 3.1 and 3.4 of the RoP state:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find the Landlord has not demonstrated, on a balance of probabilities, that the NDRP was served on the Tenant, in accordance with the provisions of Rule 3.1, within 3 days of being provided with the NDRP by the RTB. I also find the Landlord has failed to prove, on a balance of probabilities, that she served the Landlord's Evidence on the Tenant not less than 14 days before the Original Hearing as required by Rule 3.14.

Preliminary Matter – Adjournment of Original Hearing

Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP", I adjourned the Original Hearing to January 13, 2022 at 9:30 am ("First Adjourned Hearing") and issued an interim decision dated November 10, 2022 ("First Interim Decision"). In the First Interim Decision, I ordered the Landlord to serve the Tenant by email with the Notice of Adjourned Hearing, the First Interim Decision and copies of the Landlord's Evidence. The Landlord and Tenant attended the First Adjourned Hearing. The Tenant admitted he received the Notice of Adjourned Hearing. As such, I find the Notice of Adjourned Hearing was served in accordance with the provisions of section 89 of the Act. The Tenant stated he could not open 31 files that were attached to the Landlord's email on November 23, 2022. The Landlord stated she did not verify with the Tenant that he was able to open and view the attachments. As such, I find that the Landlord has failed to prove, on a balance of probabilities, that the Tenant was served with the Landlord's Evidence.

Preliminary Matter – Adjournment of First Adjourned Hearing

Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP", I adjourned the First Adjourned Hearing to February 28, 2023 at 11:00 am ("Second Adjourned Hearing") and issued an interim decision dated January 14, 2023 ("Second Interim Decision"). The RTB served the parties with the Second Interim Decision and Notice of Adjourned Hearing for the Second Adjourned Hearing. In the Second Interim

Decision, I ordered the Landlord to serve the Landlord's Evidence on the Tenant by registered mail using the address provided by the Tenant at the First Adjourned Hearing for service of documents on him. The Landlord and Tenant attended the Second Adjourned Hearing.

At the Second Adjourned Hearing, the Tenant stated he received a notice from Canada Post for registered mail. The Tenant stated that, when he attended at the post office to pick the mail up, the name on the envelope did not match the name on his driver's licence and Canada Post would not provide him with the package. In the Interim Decision, I recommended that the Landlord submit to the RTB a witness statement of an adult who confirms that he or she viewed the Landlord's Evidence and verified all pages of the evidence were visible and that all pages of the Landlord's Evidence were inserted into the package before posting by registered mail to the Tenant. Notwithstanding my recommendation, the Landlord did not provide a witness statement. As such, there was no witness who could verify the contents of the package and the name of the addressee. As such, I find that the Landlord has failed to prove, on a balance of probabilities, that the Tenant was served with the Landlord's Evidence. Based on the foregoing, I order the Landlord's Evidence is inadmissible for this proceeding. To be clear, the Landlord may not refer to the Landlord's Evidence to support her testimony.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent owing to the Landlord by the Tenant?
- a monetary order for compensation for monetary loss or other money owed by the Tenant?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The parties agreed the tenancy commenced on September 1, 2021, for a fixed term ending August 31, 2022, with rent of \$2,900.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$1,450.00 by August 15, 2021. The Landlord acknowledged the Tenant paid the security deposit. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Landlord stated the Tenant did not pay the rent for December 2021 or January 2022 and she was seeking \$5,800.00 for unpaid rent. The Landlord stated she served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities ("10 Day Notice") on the Tenant's door on December 13, 2021. The Landlord stated the 10 Day Notice required the Tenant to move out of the rental unit on December 17, 2021. The Landlord stated the Tenant told her he would be moving out right away.

The Tenant admitted he was having financial difficulties and that he did not pay any rent for December 2021. The Tenant stated he started to move out of the rental unit in December 2021 but did not complete the move-out because he was locked out of the residential property. The Tenant stated he did not receive the 10 Day Notice.

The Landlord disputed the Tenant's testimony that the Tenant was locked out of the residential property. The Tenant stated the Tenant abandoned the rental unit and she took possession of the rental unit on January 7, 2022. The Landlord stated the Tenant did not leave the rental unit in reasonably clean condition and that she is seeking \$225.00 from the Tenant for cleaning. The Tenant stated that, as he was locked out of the residential premises before he was had completed his move out of the rental unit, he was not responsible for paying for cleaning charges.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some

situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6 of the RoP, the Landlord has the onus to prove on a balance of probabilities, that she is entitled to recover the unpaid rent of \$5,800.00 and the compensation of \$225.00.

1. Landlord's Claim for Unpaid Rent

The Landlord stated the Tenant did not pay the rent for December 2021 or January 2022 and she was seeking \$5,800.00 for unpaid rent. The Landlord stated she served the 10 Day Notice on the Tenant's door on December 13, 2021. The Landlord stated the 10 Day Notice required the Tenant to move out of the rental unit on December 17, 2021. The Landlord stated the Tenant told her he would be moving out right away. The Tenant admitted he was having financial difficulties and that he did not pay any rent for December 2021.

Section 26(1) of the Act states:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover the rent for December 2021 in the amount of \$2,900.00. In respect of the Landlord's claim for unpaid rent for January 2022, the Landlord stated the Tenant moved out of the rental unit January 7, 2022. The Tenant stated he was locked out of the residential premises in late December 2021. There is no evidence before from either party that would support their version of events. As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenant was obligated to pay rent for January 2022.

Based on the foregoing, I order the Tenant to pay the Landlord \$2,900.00 representing unpaid rental arrears owed to the Landlord for December 2021, pursuant to section 67 of the Act. Pursuant to section 72(2) of the Act, I order that the Landlord may retain the security deposit of \$1,450.00 in partial satisfaction of the monetary order made above.

2. Landlord's Claim for Monetary Compensation

Section 37(2) of the Act states:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis in italics added]

The Landlord stated the Tenant did not leave the rental unit in reasonably clean condition and that she is seeking \$225.00 from the Tenant for cleaning. The Tenant stated that, as he was locked out of the residential property before he completed his move out, he was not responsible for paying for cleaning charges. There is no evidence before me from either party that would support their version of events surrounding the failure of the Tenant to clean the rental unit. Furthermore, there is no evidence before me, such as move-in and move-out condition inspection reports, to demonstrate the Tenant failed to leave the rental unit in a reasonably clean condition as required by section 37(2) of the Act. As such, I find the Landlord has not proven, on a balance of probabilities, that she is entitled to recover \$225.00 for cleaning. Based on the foregoing, I dismiss the Landlord's claim for compensation for cleaning the rental unit without leave to reapply.

3. Landlord's Filing Fee for Application

As the Landlord has been partially successful in the claims made in the Application, I award the Landlord \$100.00 for the filing fee of the Application pursuant to section 72 of the Act.

Conclusion

I order the Tenant pay the Landlord \$1,550.00 as follows:

Purpose	Amount
Unpaid rent owing for December 2021	\$2,900.00
Filing Fee of Application	\$100.00
Less: Tenant's Security Deposit	-\$1,450.00
Total:	\$1,550.00

The Landlord must serve the Monetary Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the 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: March 28, 2023

Residential Tenancy Branch