



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1098937 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 1:59 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agents MC (the landlord) and ST, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

The Residential Tenancy Branch (RTB) issued a decision on August 19, 2022 authorizing the landlord to serve the notice of hearing to the tenant's email address recorded on the cover page of this decision.

The landlord submitted into evidence the email sent to the tenant on August 23, 2022 with the notice of hearing and the interim decision (materials). I find the landlord served the tenant in accordance with the interim decision dated August 19, 2022.

The tenant is deemed to have received the materials on August 26, 2022, in accordance with the interim decision.

The landlord did not serve the evidence. I excluded the landlord's evidence, per Rule of Procedure 3.14.

The RTB emailed all the parties the notice of adjourned hearing on May 01, 2023.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on May 01, 2019 and ended on June 30, 2022. Monthly rent when the tenancy ended was \$1,370.25, due on the first day of the month. The landlord collected and currently holds in trust a deposit of \$675.00. The landlord has not received the tenant's forwarding address.

The landlord stated the tenancy agreement states:

10. ARREARS

Late payment, returned or non-sufficient fund (N.S.F) cheques, are subject to an administrative fee and N.S.F fee for an aggregated total of \$50.00 each, plus the amount of any service fees charged by a financial institution to the landlord. Although these fees are payable by the tenant to the landlord, the failure to pay the rent on the due date is a breach of a material term of this Agreement. The obligation of the tenant under this Agreement and by law requires the rent to be paid on the date this it is due. For example, an excuse that the tenant does not have the money or will not have the money until a later date is not an acceptable excuse in law.

The landlord is seeking a monetary order for the unpaid rent of June and July 2022 (\$1,370.25 per month) and one fee for non-sufficient funds (NSF) fee of \$50.00.

The tenant served a notice to end the periodic tenancy to the landlord on June 06, 2022 effective on June 30, 2022. The landlord informed the tenant that the earliest possible effective date for the tenant to end tenancy was July 31, 2022 and that the tenant is liable for July 2022 rent.

The landlord testified the tenant did not pay rent due on June and July 01, 2022, as the pre-authorized payment bounced due to insufficient funds.

The landlord was able to re-rent the rental unit for August 01, 2022.

Analysis

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 the case is on the person making the claim.

Unpaid rent June 2022

Section 26(1) 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.

Based on the landlord's convincing and undisputed testimony, I find the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay monthly rent of \$1,370.25 on the first day of each month.

Based on the landlord's convincing and undisputed testimony, I find the tenant did not pay rent due on June and July 01, 2022.

Per section 26(1) of the Act, I award the landlord June rent of \$1,370.25.

Unpaid rent July 2022

I accept the landlord's convincing and uncontested testimony that the tenant did not provide a one month notice to end tenancy to end the tenancy on June 30, 2022, as required by section 45(1) of the Act:

(1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant only provided notice to end tenancy on June 06, 2023, the earliest date the tenant could terminate the tenancy was July 31, 2023. The tenant must pay July 2022 rent, per sections 26(1) and 45(1).

As such, I award the landlord July rent of \$1,370.25.

NSF fee

Residential Tenancy Regulation (the Regulation) 7 states:

- (1) A landlord may charge any of the following non-refundable fees:
 - [...]
 - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
 - [...]
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Based on the landlord's convincing and uncontested testimony, I find the tenancy agreement states the tenant must pay a \$50.00 NSF fee for non-sufficient funds or late payment.

The Regulation prevails over the tenancy agreement. The maximum allowed NSF fee is \$25.00 per month.

Per Regulation 7(1)(d) and considering the tenancy agreement, I award the landlord the NSF fee for June 2022 of \$25.00.

Filing fee, deposit, and summary

As the landlord was successful, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a

landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$675.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for June and July 2022 (\$1,370.25 x 2)	2,740.50
NSF fee	25.00
Filing fee	100.00
Subtotal	2,865.50
Deposit (minus)	675.00
Total:	2,190.50

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$675.00 deposit and award the landlord \$2,190.50. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 31, 2023

Residential Tenancy Branch