



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for 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.

The Agent for the Landlord stated that on September 02, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 30, 2022 was personally served to the Tenant with the initials "OL", hereinafter referred to as OL. In the absence of evidence to the contrary I find that these documents have been served to OL in accordance with section 89 of the *Residential Tenancy Act (Act)*.

As the documents were properly served to OL, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

The Agent for the Landlord stated that on September 15, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 30, 2022 was emailed to the Tenant with the initials "TM", hereinafter referred to as TM. The Agent for the Landlord stated that TM authorized the Landlord to serve documents to him by email, however the Landlord submitted no evidence to corroborate this testimony.

I find that the Landlord submitted insufficient evidence to establish that TM authorized the Landlord to serve evidence to TM via email. I also note that the Landlord submitted no evidence to establish that TM actually received hearing documents sent by email on August 30, 2022. I therefore find that the Landlord has failed to establish that TM has been served hearing documents in accordance with section 89(1)(f) of the *Residential Tenancy Act (Act)*.

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 only if that email address was provided as an address for service by the person.

As I am not satisfied that TM was properly served with notice of these proceedings, the Agent for the Landlord was advised that I would not proceed with the hearing in the absence of TM. The Agent for the Landlord then stated that he would like to amend the Application for Dispute Resolution to remove TM as a Respondent. At the request of the Agent for the Landlord, the Application for Dispute Resolution was amended accordingly and any Order issued to the Landlord as a result of these proceedings will not name TM.

The Agent for the Landlord was given the opportunity present relevant evidence, to ask relevant questions, and to make relevant submissions. He affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Preliminary Matter

The Agent for the Landlord stated that OL gave the Landlord written permission to keep the security deposit for damage to the unit. He stated that he does not wish to apply the security deposit to rent owed, as OL agreed it could be applied to damage to the unit.

On the basis of this information, I find that the Landlord amended the Application for Dispute Resolution to remove the application to retain the security deposit.

The Landlord is hereby advised that in the event the Tenant provides the Landlord with a forwarding address, in writing, the Landlord should apply to the Residential Tenancy Branch to keep the security deposit unless it can be clearly established that the Tenant gave the Landlord written permission to keep the deposit.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- TM moved into the rental unit on November 08, 2021;
- OL was added to the tenancy agreement on January 25, 2022;
- At the end of the tenancy, monthly rent of \$2,300.00 was due by the first day of each month;
- a security deposit of \$1,150 was paid on November 08, 2021;
- TM moved out of the rental unit on July 26, 2022 without given written notice;
- OL moved out of the rental unit on August 30, 2022 without given written notice;
- The Landlord is seeking lost revenue of \$2,300.00 for September of 2022 as the Landlord did not receive rent for that month;
- The Landlord advertised the rental unit on several popular websites on August 30, 2022;
- The Landlord was able to locate a new tenant for October 01, 2022; and
- The Landlord is not seeking compensation for unpaid rent for any period after October 01, 2022, as the unit was re-rented for October 01, 2022.

Analysis

On the basis of the undisputed evidence, I find that the OL and TM entered into a tenancy agreement with the Landlord that required them to pay monthly rent of \$2,300.00 by the first day of each month.

On the basis of the undisputed evidence, I find that neither OL nor TM gave the Landlord proper written notice to end the tenancy.

I find that the Tenants failed to comply with the *Act* when they vacated the unit without giving proper written notice. I therefore find that OL must compensate the Landlord, pursuant to section 67 of the *Act*, for any losses the Landlord experienced as a result of the Tenants vacating the unit without proper notice.

I find that the Landlord made reasonable efforts to re-rent the unit but, given the late notice, the Landlord was unable to find a new tenant until October 01, 2022. I find that

Landlord would not have experienced this loss of the tenancy had paid rent when it was due on September 01, 2022. I therefore find that the OL must pay \$2,300.00 to the Landlord for the loss of revenue the Landlord experienced in September of 2022.

I find that the Application for Dispute Resolution has merit and the Landlord is entitled to recover the fee for filing the Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,400.00, which includes \$2,300.00 for lost revenue/unpaid rent and \$100.00 for the fee paid to file the Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,400.00. In the event OL does not comply with this Order, it may be served on OL, 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: May 26, 2023

Residential Tenancy Branch