



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1189682 BC LTD. DBA OCEAN VIEW
APARTMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on September 16, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on June 15, 2023, and was attended by an agent for the Landlord DS (Agent), and the Landlord's lawyer RH (Lawyer). All testimony provided was affirmed.

The Lawyer and Agent were advised that 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 Lawyer and Agent 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 Lawyer and Agent were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and any evidence intended to be relied upon by the applicant. As the Tenant did not attend the hearing, I confirmed service of these documents as follows. The Lawyer and Agent stated that the above noted documents were sent to the Tenant

by email on September 29, 2022, at the email address approved for substituted service by the Residential Tenancy Branch (Branch) on September 26, 2022. A copy of this email, as well as copies of email correspondence between the Tenant and agents for the Landlord just prior to service of the NODRP, were submitted for my consideration. Based on the above, I find that the Tenant was deemed served with the above noted documents three days later on October 2, 2022, pursuant to sections 88(j) and 89(1)(f) of the Act, sections 43 and 44 of the regulation, and Policy Guideline #12.

Branch records show that the NODRP was emailed to the Landlord on September 28, 2022. As I am satisfied that it was emailed to the Tenant the following day, as permitted in the substituted service decision dated September 26, 2022, I find that the NODRP was served in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. I verified that the hearing information contained in the NODRP was correct and note that the Lawyer and Agent were able to attend the hearing on time using this information. As a result, the hearing proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 15-minute duration of the hearing, no one attended on behalf of the Tenant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

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

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Lawyer and Agent stated that the Tenant owes \$4,515.00 in outstanding rent for April 1, 2023 – August 31, 2023, and sought recovery of this amount from the Tenant.

The Lawyer and Agent provided etransfer records showing that the Tenant made three separate rent payments in April of 2023 as follows:

- \$160.00 on April 5, 2023;
- \$35.00 on April 13, 2023; and
- \$290.00 on April 28, 2023.

The Lawyer and Agent stated that as rent is \$1,000.00 per month, the Tenant still owes \$515.00 for April as well as \$1,000.00 per month for May, June, July, and August of 2023, as no further rent was paid.

The Lawyer and Agent stated that the Landlord obtained a two-day order of possession from the Branch on August 11, 2023, a copy of which was submitted for my consideration, and that when the Tenant failed to vacate the rental unit as required, they were removed by a bailiff on approximately September 6, 2023. As a result, the Lawyer and Agent sought recovery of \$3,800.00 in bailiff fees. Receipts for the payments made to the bailiff were submitted for my consideration.

The Lawyer and Agent also sought recovery of \$315.00 incurred because the Tenant repeatedly refused lawful entry for the purpose of testing the heat detector connected to the buildings fire alarm system, necessitating several call-outs to the fire alarm service company and intervention from the fire department. Invoices and a letter from the fire department were submitted for my consideration.

The Lawyer and Agent stated that the Tenant never provided a forwarding address, and that the Landlord is seeking retention of the \$500.0 security deposit towards the above noted amounts owed, as well as recovery of the \$100.00 filing fee.

Analysis

Based on the documentary evidence before me for consideration and the affirmed testimony of the Lawyer and Agent at the hearing, I am satisfied that the Tenant was removed from the rental unit by a bailiff on September 6, 2023, and that they have yet to provide a forwarding address. As a result, I find that section 38(1) of the Act, has not yet been triggered. Further to this, as there is no evidence before me that the Landlord extinguished their right to retention of the security deposit, I find that they did not.

I am satisfied by the documentary evidence before me, including the tenancy agreement, and the affirmed testimony of the Agent and Lawyer, that \$1,000.00 in rent

was due each month under the tenancy agreement, that the Tenant only paid \$485.00 in rent for April of 2023, and that the Tenant paid no rent at all for May, June, July or August of 2023, residing in and overholding the rental unit until September 6, 2023. As a result, and pursuant to sections 7 and 26 of the Act, I therefore grant the Landlord's claim for recovery of \$4,515.00 in outstanding rent and compensation for overholding.

I am also satisfied that the Tenant failed to vacate the rental unit as required by the order of possession, and that the Landlord therefore had to hire a bailiff to remove the Tenant on September 6, 2023, at a cost of \$3,800.00. I therefore also grant recovery of this amount to the Landlord pursuant to section 7 of the Act.

Finally, I also grant the Landlord recovery of the \$315.00 paid to the fire alarm company pursuant to sections 7 and 29 of the Act, as I am satisfied that the Tenant was served with proper notice of entry for the purpose of inspecting the heat detector, as required by municipal bylaws, and that the Tenant repeatedly refused entry, necessitating several call-outs and intervention by the fire department.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I also grant the Landlord authorization to withhold the Tenant's \$500.00 security deposit, plus \$4.44 in interest, towards the above owed amounts. I therefore grant the Landlord a monetary order in the amount of \$8,225.56 for the balance owed, and I order the Tenant to pay this amount to the Landlord.

Conclusion

I grant the Landlord authorization to withhold the Tenant's \$500.00 security deposit, plus \$4.44 in interest, towards the \$8,730.00 owed.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of **\$8,225.56** for the remaining balance owed. 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, it 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: June 15, 2023