



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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A matter regarding DEVON PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNRL-S, MNDCL-S, FFL

Introduction

The landlord seeks compensation for unpaid rent, unpaid parking fees, a late fee, and for the application fee, pursuant to the *Residential Tenancy Act* (the “Act”). By way of cross-application the tenant seeks compensation for a purported overpayment.

Preliminary Issue: Service of Evidence

The landlord’s agent (hereafter the “landlord”) testified that they served the Notice of Dispute Resolution Proceeding and the package of evidence on the tenant by Canada Post registered mail.

The landlord provided documentary evidence, including a tracking number, showing that the mail was sent to the tenant’s new address after the tenancy. And the Canada Post registered mail tracking information (<https://www.canadapost-postescanada.ca/track-reperage/en#/home>) indicates that a notice card was left by Canada Post on March 14, 2023, and that a Final Notice was left by Canada Post on March 20, 2023. On March 22, 2023, the Canada Post system indicates that the “Item refused by recipient.”

The tenant did not have an explanation for this, other than that they did not remember receiving anything.

It is my finding, based on the evidence before me, that the landlord served their evidence on the tenant in compliance with section 89(1)(c) of the Act. The tenant was deemed served, and the tenant’s refusal to accept the registered mail does not invalidate service. For this reason, I accept the landlord’s documentary evidence and find that it was properly served for the purposes of this dispute.

Issue

Is the landlord or the tenant entitled to compensation?

Background and Evidence

An applicant must prove their claim on a balance of probabilities (“more likely than not”). I have considered the parties’ testimony, arguments, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy ended on February 28, 2023. Monthly rent was \$1,749.66 and the tenant paid a \$870.00 security deposit. A copy of the written tenancy agreement was in evidence.

The landlord seeks compensation in the amount of \$1,749.66 for unpaid rent for February 2023. They seek \$50.00 for an unpaid parking spot fee for February, \$25.00 for a late payment fee for February, and \$212.80 for rent arrears before February 2023.

The landlord submitted into evidence a tenant ledger which reflects these amounts. In total, the landlord seeks \$2,037.46 in compensation, excluding the \$100 application fee.

The tenant understood the claims being made but testified that an employee with the landlord told the tenant that they could end the tenancy at the end of February, but that there was a credit on the account that would pay for February rent. It turns out that this was an accounting error, and that the tenant owed arrears.

The tenant also testified that she told this employee that they would not need a parking spot for February 2023 (because the tenant was already moving to a new place and would not be in the rental unit for February). The tenant disputes the claim for the unpaid parking spot fee on the basis that the landlord’s employee had agreed not to cancel the parking spot.

Regarding her claim, the tenant did not elaborate or provide testimony regarding the \$700 claim being made in her application.

Analysis

Section 26 of the Act requires a tenant to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Residential Tenancy Regulation* also requires a tenant to pay certain types of fees.

In this dispute, the evidence before me leads me to find that the tenant owed \$212.80 in rent arrears, that they owe \$1,749.66 for unpaid rent for February 2023, and, that they owe \$25.00 in late payment fees. The tenant was unable to contradict the landlord's oral and documentary evidence—primarily, the ledger document—for me to conclude otherwise.

For this reason, I am satisfied that the landlord has proven, on a balance of probabilities, that the landlord is entitled to compensation for these three claims.

Regarding the claim for the parking spot fee, while the landlord provided documentary evidence showing what was owing, the landlord was unable to speak to a conversation that the tenant had with another representative of the landlord. It was the tenant's affirmed testimony that they spoke to the employee of the landlord regarding the parking spot, and that there was some sort of agreement not to charge the tenant for parking for February.

To reiterate, while the landlord referred to a "policy" of requiring one full month's notice when canceling parking, the landlord did not have first-hand knowledge of the conversation. Thus, I am unable to find that the landlord has, on a balance of probabilities, proven their claim for unpaid parking. That aspect of the landlord's claim is dismissed.

As for the tenant's claim for compensation, having not provided any testimony on this matter, I am unable to find that the tenant is entitled to any compensation. Their application for compensation is therefore dismissed.

In summary, the landlord is awarded \$1,987.46 for unpaid rent, for rent arrears, and for a late fee. The landlord is also awarded \$100.00 under section 72 of the Act for the cost of the landlord's application fee. In total, the landlord is awarded \$2,087.46.

Under section 38(4)(b) of the Act the landlord is hereby authorized to retain the tenant's \$870 security deposit in partial satisfaction of the amount awarded. The tenant is ordered, pursuant to section 67 of the Act, to pay the balance of \$1,217.46 to the landlord.

The landlord is granted a monetary order for this amount, and they must serve a copy of the monetary order upon the tenant forthwith. The monetary order may be enforced in the Provincial Court of British Columbia.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord's application is granted, in part.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 4, 2023

Residential Tenancy Branch