



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), on October 15, 2020, seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the Agent), who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me on behalf of the Landlord and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Tenant by registered mail on October 21, 2020, and provided me with the registered mail tracking number, which has been recorded on the cover page for this decision. The Agent stated that they were sent to the Tenant at their current address, which was provided to the Landlord by email on September 2, 2020, by a government agency from which the Tenant receives funding for rent. A copy of this email was submitted for my review and consideration and the address used has been recorded on the cover page of this decision.

The Canada Post website confirms that the registered mail was sent as described above, and that notice cards were left on October 22, 2020, and November 1, 2020, before the registered mail was returned to sender on November 8, 2020, as unclaimed. Section 90(a) of the Act states that unless earlier received, a document given or served by mail in accordance with section 88 or 89 of the Act is deemed received on the 5th day after it is mailed. Residential Tenancy Policy Guideline (the Policy Guideline) #12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision and that where registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

As there is no evidence before me to the contrary, I am satisfied on a balance of probabilities that the address used as the service address for the above noted registered mail package was a valid address for service for the Tenant under the Act at the time the registered mail was sent. As a result of the above, I find that the Tenant was deemed served with the above noted documents on October 26, 2020, five days after they were sent by registered mail. The hearing therefore proceeded as scheduled, despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. Although I verified that the hearing details contained in the Notice of Dispute Resolution Proceeding were correct, and I note that the Agent had no difficulty attending the hearing on time using this information, no one attended the hearing on the Tenant's behalf during the 26 minutes that the line remained open.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to the Landlord at the email address provided for the Landlord in the Application.

Issue(s) to be Decided

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

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the five month fixed term tenancy commenced on December 19, 2017, and was set to end on May 31, 2017. Although the tenancy agreement contained a clause stipulating that the Tenant was to vacate the rental unit at the end of the fixed term, the Agent stated that the tenancy continued on a month to month basis. The tenancy agreement states that rent was geared to income and would be set at 30% of the occupant's gross monthly income, however, no rent amount was listed in the tenancy agreement. At the hearing the Agent stated that rent in the amount of \$535.00 was due on the first day of the month at the time the tenancy ended. The tenancy agreement also stated that no security or pet damage deposit were required, and that the Tenant is responsible for all costs associated with gaining access to the rental unit if locked out.

The Agent stated that the above noted terms are the correct terms for the tenancy agreement and that the tenancy ended on February 3, 2021, by way of a mutual agreement to end tenancy. The Agent stated that at the time the tenancy ended, the Tenant owed \$72.00 for an after-hours lock-out call and key/fob replacement in September of 2020 and \$24.00 for key/fob replacement from June 2020, as the Tenant lost their keys/fob on both occasions.

The Agent stated that when the tenancy ended, the Tenant did not leave the rental unit reasonably clean as required by section 37 of the Act, resulting in \$245.00 in professional cleaning costs for seven hours of cleaning, and \$306.00 in junk/garbage removal costs.

As a result of the above, the Landlord sought compensation in the amount of \$701.00. The Landlord also sought recovery of the \$100.00 filing fee. In support of the Application and the above noted claims, the Landlord submitted an account summary, a Monetary Order Worksheet, copies of the move-in and move-out condition inspection reports, photographs of the rental unit at the end of the tenancy, the tenancy agreement, and copies of letters and invoices for the after-hours lockout, the key/fob replacements, cleaning costs, and junk/garbage removal costs.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration, despite my finding that the Tenant was deemed served with the documentary evidence before me from the Landlord, a copy of the Application and a copy of the Notice of Hearing, on October 26, 2020.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline #1 states that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site and is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

Based on the above, I find that the Tenant was required to leave the rental unit reasonably clean at the end of the tenancy. Based on the uncontested documentary evidence and affirmed testimony before me from the Agent, including numerous photographs of the rental unit at the end of the tenancy, cleaning and junk/garbage removal invoices, and the move-out condition inspection report, I find that the Tenant breached section 37 of the Act by failing to leave the rental unit reasonably clean the end of the Tenancy, resulting in \$605.00 in cleaning and junk/garbage removal costs. I am also satisfied that the Landlord acted reasonably to minimize any loss, by having these services completed in a timely manner and at a reasonably economic rate. As a result, I therefore find that the Landlord is entitled to the \$605.00 sought for junk/garbage removal and cleaning costs.

Based on the uncontested documentary evidence and affirmed testimony before me from the Agent, I am also satisfied that the Tenant owes the Landlord \$96.00 in charges incurred during the tenancy for key/fob replacement and after-hours lockout calls, in accordance with the tenancy agreement and sections 7(1)a) and 7(1)(g) of the regulations, which remained unpaid at the end of the tenancy. As a result, I therefore find that the Landlord is entitled to the \$96.00 sought for these costs. Pursuant to section 72 of the Act, I also find that the Landlord is entitled to recovery of the \$100.00 filing fee.

Based on the above, and pursuant to section 67 of the Act, I therefore find that the Landlord is entitled to a Monetary Order in the amount of \$801.00.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$801.00. 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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Tenant is cautioned that costs of such enforcement may be recoverable from them by the Landlord.

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: February 9, 2021

Residential Tenancy Branch