



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1039061 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL (Landlord)
 MNSDB-DR, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenant filed the application January 15, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security and pet damage deposits
- For reimbursement for the filing fee

The Tenant’s Application was an adjourned direct request.

The Landlord filed the application January 20, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Agent. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Agent advised that the Landlord is seeking further compensation than that sought in the Landlord’s Application including increased unpaid rent of \$4,160.43, bailiff costs

and the cost of repairs. The Landlord had not submitted an Amendment or a Monetary Order Worksheet showing these additional amounts. Pursuant to rule 4.2 of the Rules, I allowed the Landlord to amend the amount of unpaid rent sought to \$4,160.43. I did not allow the Landlord to amend the Landlord's Application further as the Landlord was required to file an Amendment and serve this on the Tenant pursuant to rules 4.1 and 4.6 of the Rules.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agent testified as follows. The hearing package and initial evidence were sent to the rental unit by registered mail on January 21, 2021. The Tenant was still living at the rental unit at the time. Tracking Number 1 relates to this first package. A second package of evidence was sent to the Tenant by registered mail at the forwarding address provided on the Tenant's Application on May 06, 2021. Tracking Number 2 relates to this second package. The Landlord received the hearing package for the Tenant's Application which is how the Landlord received the Tenant's forwarding address.

The Landlord submitted the customer receipt for Tracking Number 2.

I looked Tracking Number 1 up on the Canada Post website which shows the first package was delivered January 29, 2021. I looked Tracking Number 2 up on the Canada Post website which shows the second package was delivered May 12, 2021.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(c), 88(d) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Tenant received the packages January 29, 2021 and May 12, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service of the first package. I am satisfied the second package was served in sufficient time prior to the hearing and note that the Tenant did not appear at the hearing to take issue with this.

Given I was satisfied of service in relation to the Landlord's Application, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the

Landlord's documentary evidence and all testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Preliminary Matter – Tenant's Application

Rules 7.3 and 7.4 of the Rules state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not appear at the hearing, the Tenant's Application is dismissed without leave to re-apply. Further, I have not considered the Tenant's evidence given the Tenant did not attend the hearing to present it.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security and pet damage deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

As stated, the Landlord sought \$4,160.43 in unpaid rent.

A number of written tenancy agreements were submitted as evidence. The Agent advised that the most recent tenancy agreement is the agreement starting December 01, 2020 for a fixed term ending December 31, 2020. The tenancy then became a

month-to-month tenancy. Rent was \$1,365.81 per month due on the first day of each month. The Tenant paid a \$650.00 security deposit and \$650.00 pet damage deposit. The agreement is signed by both parties.

The Agent testified that the tenancy ended February 20, 2021.

The Agent testified that the Tenant and another person lived in the rental unit. The Agent testified that the other person was an occupant and not a tenant. The Agent testified that the Tenant may have moved out of the rental unit December 31, 2020; however, the Tenant did not schedule a move-out inspection and never returned the keys to the rental unit. Further, the occupant remained in the rental unit. The Agent testified that the Tenant could have been living in the rental unit until February of 2021 and that the Landlord does not know if the Tenant moved out earlier.

The Agent testified that the Landlord only received a forwarding address for the Tenant on the Tenant's Application and did not receive any other forwarding address from the Tenant.

The Agent testified that the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Agent testified that the Tenant did not agree to the Landlord keeping the security or pet damage deposits at the end of the tenancy.

The Agent testified that both parties did a move-in inspection. The Agent testified that a move-out inspection was not done, and the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection.

The Agent testified that \$4,160.43 in rent is outstanding and referred to the rent ledger in evidence. The Agent testified that this amount includes March rent. The Agent testified that there was a substantial amount of work to do in the rental unit after the bailiff removed the occupant February 20, 2021. The Agent testified that the rental unit was re-rented for April. The Agent acknowledged the amount of \$4,160.43 includes NSF fees. The Agent testified that the Tenant did not have authority under the *Act* to withhold rent.

Analysis

I have not considered whether the Landlord is entitled to NSF fees or loss of rent for March as these are not claims for unpaid rent, which is what the Landlord's Application is for. NSF fees are not rent as is clear from the definition of "rent" in section 1 of the *Act*. Further, the Tenant was not required to pay rent once the Tenant and occupant had vacated the rental unit. It may be that the Tenant owes the Landlord compensation for loss of rent for March; however, this is a separate claim and separate ground in an application for dispute resolution. I have read the Landlord's Application and it only states that the Landlord is seeking unpaid rent. The Monetary Order Worksheet only states that the Landlord is seeking \$1,365.81 for unpaid rent. It is not clear from the Landlord's Application that the Landlord is seeking NSF fees and loss of rent for March. Therefore, I have only considered whether the Landlord is entitled to unpaid rent.

Pursuant to rule 6.6 of the Rules, the Landlord as applicant has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the Agent in relation to a move-in and move-out inspection, I find the Tenant did not extinguish her rights in relation to the security or pet damage deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid rent.

Based on the testimony of the Agent, I accept that the tenancy ended February 20, 2021. Given the testimony of the Agent, I am not satisfied the Tenant vacated the rental unit prior to February 20, 2021. Further, the tenancy did not end until the occupant

vacated the rental unit and I am satisfied the occupant remained in the rental unit until February 20, 2021 based on the testimony of the Agent.

Based on the testimony of the Agent, I accept that the Landlord did not receive a forwarding address from the Tenant other than on the Tenant's Application. Providing a forwarding address on an application for dispute resolution is not sufficient. The Tenant was required to provide a forwarding address in writing to the Landlord separate and apart from the Tenant's Application. In the circumstances, I find the Landlord has not received a forwarding address from the Tenant.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security and pet damage deposits or claim against them. Given the Landlord has not received a forwarding address from the Tenant, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to seek to keep the security and pet damage deposits towards unpaid rent.

Unpaid Rent

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 13 states at page 4:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to

include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. **The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.** (emphasis added)

As stated, I am satisfied the tenancy ended February 20, 2021. As stated, I am not satisfied the Tenant moved out of the rental unit prior to February 20, 2021. As stated, in any event, the Tenant is responsible for the occupant and therefore is responsible for paying rent while the occupant was living in the rental unit. As stated, I am satisfied the occupant lived in the rental unit until February 20, 2021.

Pursuant to the tenancy agreement, I am satisfied the Tenant was required to pay \$1,365.81 in rent per month by the first day of each month.

Based on the rent ledger, I am satisfied the Tenant failed to pay rent for January and February of 2021. Based on the testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent for these months. I find the Tenant owes the Landlord \$2,731.62 for unpaid rent for January and February of 2021. I acknowledge that the tenancy ended February 20, 2021. I award the Landlord unpaid rent for all of February given rent is due on the first day of each month and given how late in February the Tenant and/or occupant vacated.

Given the Landlord has been successful in the Landlord's Application, the Landlord is awarded reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlord \$2,831.62. The Landlord can keep the security and pet damage deposits pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,531.62 pursuant to section 67 of the *Act*.

Conclusion

The Tenant owes the Landlord \$2,831.62. The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$1,531.62. This Order must be served on the Tenant. If the Tenant fails 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 Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 02, 2021

Residential Tenancy Branch