



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

The landlord applied for an order of possession based on a notice to end tenancy, and, for compensation, under the *Residential Tenancy Act* (“Act”). In addition, the landlord applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

It should be noted that the tenant is no longer in the rental unit and as such the landlord’s initial application for an order of possession is now moot. Only compensation is being sought at this point.

Preliminary Issue: Service

The landlord attended the hearing, but the respondent tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch’s *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified under oath that she served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlord submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenant was served by registered mail. He was served while still in the property.

After the tenant was removed from the rental unit with the assistance of a court-appointed bailiff, the landlord amended her application for additional compensation. An updated Monetary Order Worksheet, along with receipts, were submitted to both the Residential Tenancy Branch and copies were served on the tenant by e-mail.

While the landlord made an additional application for an order for substituted service (to permit service by email), that application was denied. However, the landlord then provided copies of the tenant's email address (which was apparently missing from her initial application for substituted service). Having reviewed the landlord's supplementary documentary evidence on this specific issue, it is my finding that the landlord was permitted to serve her updated worksheet and evidence on the tenant by way of email. This method of service is permitted under sections 89(1)(f) and 89(2)(f) and section 43 of the *Residential Tenancy Regulation*.

Given the evidence before me, it is my finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence, including the updated Monetary Order Worksheet and supplemental evidence, necessary for him to participate fully in these proceedings.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on November 1, 2020 and ended after the landlord was granted an order of possession on January 31, 2022 (see previous file number). The landlord filed a copy of the order of possession in the Supreme Court and obtained the services of a bailiff to attend to the rental unit and remove the tenant and his belongings. A copy of the invoice from Consolidated Civil Enforcement BC Inc. is in evidence, as is a copy of the receipt for the court filing fee.

The landlord gave evidence that the tenant did not pay any rent for January and February 2022, nor did he pay for utilities as he was required to do under the written tenancy agreement.

In total, the landlord seeks \$8,305.73 in compensation, comprising \$4,460.00 for unpaid rent and utilities, \$120.00 for the writ of possession court filing fee, \$3,625.73 for the court bailiff fee (which included mover costs), and \$100.00 for the Residential Tenancy Branch filing fee.

The landlord confirmed that she holds \$1,050.00 of the tenant's security deposit, and \$1,050.00 of the tenant's pet damage deposit, in trust pending the outcome of this matter.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant pay rent (including any utilities that are due and payable under the tenancy agreement) on time and in full.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

In this dispute, the landlord's oral and documentary evidence persuades me to find that the tenant failed to pay rent and utilities, as required by the tenancy agreement. Moreover, the undisputed evidence persuades me to find that the tenant failed to comply with a notice to end the tenancy and an order of possession, both of which resulted in the landlord being put into the position of having to expend a considerable amount of money in having the tenant removed from the property.

Taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for compensation, including her right to recover the cost of the \$100.00 application filing fee. The landlord is awarded a total of \$8,305.73.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, the landlord is hereby authorized to retain the security and pet damage deposits (totalling \$2,100.00) in partial satisfaction of the above-noted award.

The landlord is granted, in conjunction with this decision, a monetary order in the amount of \$6,205.73. A copy of this order must be served on the tenant by the landlord. If the tenant fails to pay the landlord the amount owed within 15 days of receiving a copy of this decision, the landlord may then file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The landlord's application is granted.

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

Dated: April 8, 2022

Residential Tenancy Branch