



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARLBOROUGH HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On October 16, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral testimony at the hearing. Both parties testified that they did not exchange evidence in accordance with Section 89 of the Act and agreed to proceed with the hearing without referring to their submitted evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant provided the correct spelling of her last name and in accordance with Section 64(3) of the Act, I made that amendment on the Application and in this Decision.

The Landlord stated that the Tenant moved out of the rental unit on November 4, 2018; therefore, did not require an Order of Possession for the rental unit.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenant and the Landlord agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on July 1, 2017 and continued on as a month-to-month tenancy after June 30, 2018. The monthly rent of \$1,580.00 was due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$790.00 and a pet damage deposit in the amount of \$790.00. The Tenant moved out of the rental unit on November 4, 2018.

The Landlord testified that the Tenant failed to pay her October 2018 rent and the Landlord subsequently issued a 10-Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2018 (the "Notice"), to the Tenant on October 3, 2018 via email and posting it on the Tenant's door.

The Landlord stated that she did not receive the rent for October or November 2018. The Landlord said that as a result of the Tenant failing to provide notice that she was moving, the Landlord was unable to rent out the unit for November 2018. The Landlord is claiming a Monetary Order for the loss of rent for October and November 2018, for a total of \$3,160.00.

The Tenant testified that she did not pay the October 2018 rent and that the Landlord could keep her security deposit and pet damage deposit to cover the October 2018 rent. The Tenant did not agree that she should pay for the November rent, or she would have stayed in the rental unit until that time.

The Tenant stated that she did not have a current, permanent address and is in the process of finding a new residence; therefore, could not provide the Landlord a forwarding address.

Analysis

Based on undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,580.00 by the first day of each month and that the Tenant has not paid rent from October 1, 2018 through to November 4, 2018. As the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$1,580.00 in outstanding rent for October 2018.

The Tenant argued that she should have been able to stay in the rental unit throughout November 2018, if she had to pay for November 2018 rent. I considered the undisputed evidence of the Landlord that not only did the Tenant leave without giving any notice, but that she left of her own volition and knowing that there was a participatory hearing scheduled for today.

Section 45(1) of the Act authorizes a Tenant to end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

The Tenant vacated the rental unit on November 4, 2018, and this was the date she notified the Landlord that she was moving out. Pursuant to Section 45(1), the Tenant's notice to vacate the rental unit would be effective on December 31, 2018. The Landlord has only claimed the loss of rent for November 2018. As the Tenant lived in the rental unit for four days of November and did not give proper notice, I find that the Landlord should be compensated for her loss of rent in November 2018, in the amount of \$1,580.00.

The Landlord's Application has merit and she should be compensated for the cost of the filing fee, in accordance with Section 72 of the Act.

The Landlord has established a monetary claim, in the amount of \$3,260.00, which includes \$3,160.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit and pet damage deposit in the amount of \$1,580.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$1,680.00 in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,680.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: November 27, 2018

Residential Tenancy Branch