



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (“Act”), and dealt with an Application for Dispute Resolution (“application”) by the landlords for an order of possession for unpaid rent and a monetary order for unpaid rent, for a monetary order for unpaid rent or utilities and to recover the cost of the filing fee. On September 24, 2018, an adjudicator adjourned the matter to a participatory hearing which was held this date, Thursday, November 1, 2018 at 11:00 a.m. Pacific Time. The Interim Decision written by the adjudicator dated September 24, 2018 should be read in conjunction with this decision.

The three landlords YX, GL, and JC (“landlords”) attended the teleconference hearing as scheduled and provided affirmed testimony. The landlords also presented documentary evidence and verbally requested to retain the tenant’s security deposit to offset the unpaid rent owed. I have described the testimony and documentary evidence relevant to the matters before me below.

As the tenant did not attend the participatory hearing, service of the original Notice of Direct Request Proceeding, the Notice of an Adjourned Hearing, Interim Decision and documentary evidence were considered. The landlords testified that the Notice of Direct Request Proceeding and documentary evidence were served on the tenant who remains in the rental unit by personal service on September 20, 2018.

Regarding the Notice of Adjourned Hearing and Interim Decision the landlords affirmed that those were served on the tenant by personal service on September 29, 2018. Given the above, I accept the landlords’ undisputed testimony that the tenant was served as noted above. As the tenant did not attend this hearing, I consider the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2018 (“10 Day Notice”) and this application to be unopposed by the tenant.

Preliminary and Procedural Matters

The landlords testified that in addition to the rent owed as claimed in the original application which was eventually paid late by the tenant on September 20, 2018, the landlords have suffered a loss of rent for October 2018 as the tenant continues to occupy the rental unit. As a result, the agent requested to amend the application to include rent owed for October 2018 in the amount of \$1,000.00. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as the tenant continues to occupy the rental unit. Therefore, I amend the application to \$1,000.00 for unpaid rent/loss of rent for October 2018. I will also consider the tenant's security deposit at this hearing as the landlords verbally requested to retain the tenant's security deposit to offset unpaid rent at the outset of the hearing.

The landlords confirmed their email address at the outset of the hearing. The landlords confirmed their understanding that the decision and any related orders would be sent to the landlords by email. The tenant will be sent the decision by regular mail as an email address for the tenant was not included in the application.

Issues to be Decided

- Are the landlords entitled to an order of possession for unpaid rent?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlords submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on December 1, 2017. Monthly rent of \$1,000.00 is due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlords continue to hold.

The landlords applied for dispute resolution on September 12, 2018, through the direct request process after the 10 Day Notice was served on tenant by personally serving the tenant on September 3, 2018. A copy of the 10 Day Notice was submitted in evidence.

The landlords confirmed that the tenant did dispute the 10 Day Notice and failed to pay September 2018 rent until September 20, 2018 which is well after the effective vacancy date listed on the 10 Day Notice of September 13, 2018.

The landlords stated that the tenant continues to remain in the rental unit and that the landlords have suffered a loss of October 2018 rent in the amount of \$1,000.00 as a result. The landlords are seeking an order of possession and a monetary order and if he they are entitled would like the recovery of the cost of the filing fee and to have the security deposit offset from the amount owed, if possible.

Analysis

Based on the undisputed documentary evidence of the landlords and undisputed testimony provided by the landlords, and on the balance of probabilities, I find the following.

Order of Possession - I accept the landlords' undisputed testimony that the tenant failed to pay the full amount of rent owed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, September 13, 2018. Therefore, pursuant to section 55 of the *Act* I grant the landlords an order of possession effective **two (2) days** after service on the tenant.

Monetary order - I accept the landlords' undisputed testimony that the tenant owes a total of \$1,000.00 for loss of October 2018 rent. I note that the testimony of the landlords is consistent with their claim. Given the above, I find the tenants breached section 26 of the *Act* which requires that rent be paid on October 1, 2018 for October 2018 and that the tenants continue to occupy the rental unit of the date of this hearing, November 1, 2018. Therefore, I grant the landlords **\$1,000.00** as claimed.

As the landlords' application had merit, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$1,100.00** comprised of loss of rent plus the recovery of the cost of the filing fee. As the landlords continue to hold the tenant's security deposit of \$500.00 which has accrued no interest to date, and pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlords'

monetary claim. Pursuant to section 67 of the *Act*, I grant the landlords a monetary order for the balance owing by the tenant to the landlords in the amount of \$600.00.

Conclusion

The landlords' application is successful.

The landlords have been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on September 13, 2018 and that the tenant has been overholding the rental unit since that date.

The landlords have established a total monetary claim of \$1,100.00 as described above. The landlords have been authorized to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order for the balance owing by the tenant to the landlords in the amount of \$600.00.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 1, 2018

Residential Tenancy Branch