



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), made initially by way of an *ex parte* direct request application on September 19, 2018, which was then adjourned to a participatory hearing to confirm service. The landlord seeks the following remedies:

1. an order of possession for unpaid rent, pursuant to section 55 of the Act;
2. a monetary order for unpaid rent, pursuant to section 67 of the Act; and,
3. a monetary order for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened, and the landlord's agent attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord applied for an order for substituted service to serve documents at the tenant's workplace, as she vacated the rental unit and did not leave a forwarding address. I find, and hereby order, that the Notice of Dispute Resolution Proceeding documents were served by a method that is sufficient for the purposes of section 71 of the Act.

While I have reviewed all oral and documentary evidence submitted, only evidence relevant to the issue(s) of this application are considered in my decision.

The landlord's agent advised me that the tenant has since vacated the rental unit and as such the landlord is not seeking an order of possession. I therefore dismiss that aspect of the landlord's application.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's agent testified, and submitted documentary evidence to support his testimony, that the tenant and landlord entered into a tenancy on October 1, 2015. A copy of the written tenancy agreement was submitted into evidence. Monthly rent, due on the last date of the month, was in the amount of \$1,150.00. The tenant paid a security deposit of \$550.00, of which the landlord requested, during the hearing, to retain if he was successful in this application. The tenant did not pay a pet damage deposit.

The tenant failed to pay rent when it was due for September 2018 and for October 2018, and currently owes unpaid rent in the amount of \$2,300.00.

The landlord's agent, along with a witness, served the tenant or an adult who apparently resides with the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, in-person, on September 9, 2018. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent, along with a proof of service document, were submitted into evidence by the landlord.

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 must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord's agent testified, and provided documentary evidence to support his submissions, that the tenant did not pay rent for the months of September and October 2018, and that \$2,300.00 is currently owed. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice.

Taking into consideration the undisputed oral testimony of the landlord's agent, and the documentary 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 their claim that the tenant owes \$2,300.00 in rent.

As the landlord is successful in their claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee.

I hereby order that the landlord retain the security deposit in the amount of \$550.00 in partial satisfaction of the award.

Conclusion

I grant the landlord a monetary order in the amount of \$1,850.00, which must be served on the tenant by the method permitted under my order for substituted service. The monetary order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

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: November 15, 2018

Residential Tenancy Branch