



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. As the Landlord was granted an Order of Possession at a previous dispute resolution proceeding, the Landlord withdrew the application for an Order of Possession.

The Landlord stated that sometime in September of 2018 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on October 09, 2018 were personally served to both Tenants. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The female Tenant stated that on November 07, 2018 she attempted to submit evidence to the Residential Tenancy Branch but was unable to do so because this file had been closed. I am aware that this file was closed by the Residential Tenancy Branch as a result of an administrative error.

The female Tenant stated that she was able to submit her 22 pages of evidence to the Residential Tenancy Branch on November 15, 2018 after the aforementioned administrative error was corrected. She stated that she did not have time to serve this evidence to the Landlord, given that she was only able to submit it to the Residential Tenancy Branch on November 15, 2018.

Given these circumstances I find it was reasonable that the Tenants did not serve their evidence to the Landlord. The Tenants were advised that the hearing would be adjourned to provide them with the opportunity to serve their evidence to the Landlord if it became evident, during the hearing, that the evidence was relevant.

The Landlord and the Tenants agree that this tenancy was the subject of a previous dispute resolution proceeding on October 15, 2018; that those proceedings related, in part, to the Tenants' application for a monetary Order; and that the Tenants' application for a monetary Order was not considered on October 15, 2018. The file number for those proceedings is recorded on the first page of this decision.

The female Tenant stated that the evidence she submitted related to her monetary claim that was scheduled to be considered on October 15, 2018. She stated that it was her understanding that her claim for a monetary Order that was scheduled to be heard on October 15, 2018 would be heard at these proceedings.

The Tenants were advised that on October 15, 2018 their claim for a monetary Order was dismissed, with leave to reapply. The Tenants were advised that this means they must file another Application for Dispute Resolution if they wish to pursue a claim for a monetary Order. The Tenants were advised that their claim for a monetary Order would not be considered at these proceedings.

The female Tenant stated that none of the evidence the Tenants submitted on November 15, 2018 is relevant to issues in dispute in the Landlord's Application for Dispute Resolution. As none of the Tenants' documentary is relevant to issues in dispute in the Landlord's Application for Dispute Resolution, I find it was not necessary to adjourn the hearing to provide the Tenants with the opportunity to serve their evidence to the Landlord

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began in April of 2013;
- at the end of the tenancy the Tenants were required to pay monthly rent of \$800.00;
- the Tenants paid a security deposit of \$475.00;
- in my decision from a previous dispute resolution proceeding held on October 15, 2018 I had concluded that the Tenants owed \$2,550.00 in rent for the period between January 01, 2018 and August 31, 2018;
- the rental unit was vacated on November 02, 2018; and
- the Tenants have not paid any rent since October 15, 2018.

The Landlord is seeking to recover \$4,150.00 in unpaid rent for the period between January 01, 2018 and October 31, 2018.

The Landlord stated that he did not wish to amend the amount of his claim to include compensation for unpaid rent for the two days in November that the Tenants occupied the rental unit.

The female Tenant stated that the Tenants did not make any emergency repairs to the rental unit that authorized them to withhold any portion of their rent.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$800.00 during the latter portion of the tenancy agreement.

As I determined at a previous dispute resolution proceeding held on October 15, 2018 that the Tenants owed \$2,550.00 in rent for the period between January 01, 2018 and August 31, 2018, that matter has been fully decided and cannot be reconsidered at these proceedings. As the Tenants acknowledged that they have not paid any portion of this debt to the Landlord, I find that the Landlord is entitled to a monetary Order for this amount.

On the basis of the undisputed evidence that the Tenants paid no rent for September and October of 2018 and they resided in the rental unit during those months, I find that they must also pay \$1,600.00 in rent for these two months.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$4,250.00, which includes \$4,150.00 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 of \$475.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,675.00. 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 *Act*.

Dated: November 17, 2018

Residential Tenancy Branch