



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 decision is in respect of the landlord's application for dispute resolution made on October 16, 2018 under the *Residential Tenancy Act* (the "Act"). The landlord sought the following remedies:

1. an order of possession;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened, and the landlord attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend.

The landlord confirmed that there is only one legal landlord in this application, and that the second applicant was a potential representative, who did not appear at the hearing. As such, I have amended the cover page of this Decision accordingly.

The landlord testified that he served the Notice of Dispute Resolution package on each of the tenants on October 19, 2018, by way of in-person service. The male tenant accepted the package at 5:55 P.M. The female tenant refused to accept the package. I find that the landlord served the tenants in compliance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue(s) of this application are considered in my decision.

Preliminary Issue: Order of Possession

The landlord testified and confirmed that the tenants vacated the rental unit on October 25, 2018, and as such he no longer required an order of possession. As such, I dismiss that aspect of his claim without leave to reapply.

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 testified that the tenancy commenced on March 1, 2018, and ended on October 25, 2018, when the tenants vacated the rental unit. Monthly rent, due on the first of the month, was \$2,250.00, and the tenants paid a security deposit in the amount of \$1,126.00. There was no pet damage deposit.

The landlord next testified that the tenants failed to pay all of the rent for September 1, 2018, and that \$1,250.00 is currently owing. In addition, the tenants failed to pay rent for October 2018, in the amount of \$2,250.00, for a total unpaid rent of \$3,500.00.

On September 29, 2018, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), with an effective end of tenancy date of October 10, 2018.

In reviewing the landlord's application, there appeared to be additional claims for compensation related to the tenants' damage to the rental unit. However, this was unrelated to the landlord's application as it was made at the time.

As such, I am unable to consider this additional claim and told the landlord that he would need to file a new and separate application seeking compensation in regard to these amounts.

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.

The landlord testified, and provided documentary evidence to support his submission, that the tenants did not pay rent when it was due and did not pay some of the rent for September 2018 and none of the rent for October 2018. Further, there is no evidence before me to find that the tenants had a right under the Act to deduct some or all of the rent, and, insufficient evidence indicating that they applied to cancel the Notice.

Taking into consideration all the undisputed oral testimony and 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 his claim for compensation for unpaid rent in the amount of \$3,500.00.

As such, I grant the landlord a monetary award of \$3,500.00 and an additional monetary award of \$100.00 for recovery of the filing fee, for a total award of \$3,600.00. I order that the landlord retain the security deposit of \$1,125.00 in partial satisfaction of this award.

Conclusion

I grant the landlord a monetary order in the amount of \$2,475.00, which must be served on the tenants. The 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 26, 2018

Residential Tenancy Branch