



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNR OPR MNSD FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on October 4, 2019 and was amended on October 21 and 25, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on October 3, 2019 (the “Tenants’ Application”). The Tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2019 (the “10 Day Notice”), pursuant to the *Act*.

The Landlord attended the hearing and was accompanied by his spouse who did not participate in the hearing. The Tenants were represented at the hearing by A.D. and K.S. All in attendance provided a solemn affirmation.

The Landlord testified the Landlord's Application package was served on the Tenants by registered mail and other means. The Tenants acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of these documents. Therefore, pursuant to section 71 of the *Act*, I find the Landlord's Application package was sufficiently served for the purposes of the *Act*.

The Landlord also submitted amendments on October 21 and 25, 2019. The amendments were related to claims for losses related to damage and cleaning. The Landlord testified these were served on the Tenants by registered mail and by other means. However, Tenants denied receipt. Therefore, in light of the Tenants' testimony and the lack of proof of service, I find the amendments were not served in accordance with the *Act*. As a result, I dismiss these claims with leave to reapply. The Tenants did not dispute this decision during the hearing.

The Tenants testified the Tenants' Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Tenants' Application package is sufficiently served for the purposes of the *Act*.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties confirmed during the hearing that the Tenants vacated the rental unit on or about October 17, 2019. As a result, I find that an order of possession is no longer required. Therefore, this aspect of the Applications has not been considered further.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the Landlord's claim?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the fixed-term tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on November 1, 2018 and was expected to continue to October 31, 2019. Rent in the amount of \$1,600.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00, which the Landlord holds.

The Landlord testified the Tenants did not pay rent when due on October 1 and November 1, 2019. The Landlord testified the unit has not yet been re-rented.

The Tenants acknowledged rent was not paid as alleged because of breathing issues, mold, and spiders. The Tenants also questioned why rent should be paid for the month of November as they provided the Landlord with written notice to end the tenancy. The Tenants were unable to provide the exact date of service of written notice but indicated it was placed in a shared mailbox at the end of September 2019. The Landlord testified he received the Tenants' correspondence dated September 30, 2019 on October 2, 2019.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In addition, section 45 of the *Act* permits a tenant to end a fixed term tenancy or a periodic tenancy by giving the landlord notice to end the tenancy. In either case, the

notice must be given before the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In other words, a notice to end tenancy received by a landlord in any given month is effective to end the tenancy on the last day of the following month.

In this case, the Tenants acknowledged, and I find that they did not pay rent when due on October 1, 2019. I find the reasons provided by the Tenants did not give rise to a right under the *Act* to withhold rent.

With respect to the Landlord's claim for unpaid rent due on November 1, 2019, I accept the Landlord's testimony that the Tenants' notice to end tenancy was dated September 30, 2019, and that the notice was received by the Landlord on October 2, 2019. Therefore, I find the Tenants notice was effective to end the tenancy on November 30, 2019. As a result, rent remained due on November 1, 2019.

Considering the above, I find the Landlord has demonstrated an entitlement to a monetary order for unpaid rent due on October 1 and November 1, 2019 in the amount of \$3,200.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. I also find it is appropriate to order that the Landlord may retain the \$800.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$2,500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent (October and November 2019):	\$3,200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$800.00)
TOTAL:	\$2,500.00

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$2,500.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord is granted leave to reapply for the remainder of the relief sought at a later date.

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 7, 2019

Residential Tenancy Branch