



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, OPC, MNR, FF
TENANT: AAT, CNC, CNR, PRI, LAT, LRE, MNDC, OLC, PSF

Preliminary matters

These applications were first heard on December 10, 2019 and were adjourned to today. The adjournment was done to allow the Tenants to reorganize and clarify their evidence package. At the start of today's hearing the Tenant said that due to family issues and health issues they were unable to resubmit their evidence packages in time for this hearing. Consequently the Tenants withdrew their application and said they would reapply at a later date.

The Hearing continued with the Landlord's application.

Introduction

This remaining matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding. The Landlord's application was originally made under the Direct Request process which was served to the Tenants on November 1, 2019 by registered mail. The Tenants filed an application to dispute the Landlord's claim of unpaid rent on October 24, 2019. Consequently both applications were scheduled for a participatory hearing on December 10, 2019. The Landlord filed an amendment to include a 1 Month Notice to End Tenancy for Cause and a request to retain the Tenants' security deposit of \$550.00 on November 8, 2019.

At the hearing of December 10, 2019 the parties said the tenancy ended on December 7, 2019 so the Landlord withdrew his claims for an Order of Possession. The Landlord requested during the hearing of today that his monetary claims for unpaid rent, to recover the filing fee and to retain the security deposit be heard.

As the Tenants have withdrawn their application, today's hearing will only deal with the Landlord's claim for unpaid rent, to retain the Tenants' security deposit as partial payment of the unpaid rent and to recover the filing fee of \$100.00.

Service of documents for each party were accepted in the hearing dated December 10, 2019.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 1, 2016 as a month to month tenancy. Rent is \$1,200.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$550.00 on August 8, 2016. The Tenant said no condition inspection reports were completed for this tenancy.

The Landlord said that the Tenant has unpaid rent of \$1200.00 for each month of October 2019, November 2019 and December 2019 for a total of \$3,600.00 in unpaid rent. The Landlord said he gave the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent dated October 24, 2019 which was personally delivered on October 24, 2019. The 10 Day Notice to End Tenancy for Unpaid Rent was not submitted into evidence. The Landlord continued to say the Tenant said he would not pay the rent. As a result the Landlord said he made an application on October 25, 2019 under the Direct Request process to end the tenancy and recover the unpaid rent. The Landlord requested a monetary order for \$3,600.00 in unpaid rent, to retain the Tenants' security deposit of \$550.00 and to recover the filing fee of \$100.00.

The Tenant agreed the rent was unpaid for October, November and December 2019 in the amount of \$3,600.00. The Tenant continued to say he didn't pay the rent because the Landlord had not made repairs to the rental unit and there were health issues in the rental unit that the Landlord had not corrected. Further the Tenant said the Landlord had given them a letter saying they had additional time to pay the unpaid rent. The Tenant said he decided not to pay the rent until the two applications from each party were heard.

The Landlord said the letter the Tenant is referring to said the November 2019 rent had to be paid on time.

The Tenant said in closing that he is apologizing for the delay in his evidence submission, but as he has withdrawn his application for now he will reorganize and clarify the evidence for his next application.

The Landlord said in closing he would like his unpaid rent of \$3,600.00, to retain the Tenants' security deposit and to recover the \$100.00 filing fee. Further the Landlord said that he may make another application for damages.

Analysis

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. In this case the Tenants made an application to dispute the unpaid rent with in the time limits.

Although the 10 Day Notice to End Tenancy for Unpaid Rent was not included in the evidence package of either parties; I accept the affirmed testimony of both the Landlord and the Tenant that the October, November and December 2019 rent of \$1,200.00 for each month was unpaid. Both parties agreed there was \$3,600.00 in unpaid rent.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, **whether or not the landlord complies with this Act, the regulations or the tenancy agreement**, unless the tenant has the right under this Act to deduct all or a portion of the rent.

I find that the Tenants have not paid the rent and do not have the right under to Act to retain all or part of the rent. The Landlord is entitled to recover the unpaid rent for October, November and December 2019 in the amount of \$3,600.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 67 and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid rent	\$3,600.00	
	Recover Filing Fee	<u>\$ 100.00</u>	
	Subtotal		<u>\$3,700.00</u>
Less	Security Deposit	<u>\$ 550.00</u>	
	Subtotal		<u>\$ 550.00</u>
	Balance Owing		<u>\$3,150.00</u>

Conclusion

A Monetary Order in the amount of \$3,150.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 14, 2020

Residential Tenancy Branch