



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, MNRL-S, FFL

Introduction

This decision addresses cross-applications made by the landlord, who seeks relief under sections 47, 55, 67, and 72 of the *Residential Tenancy Act* ("Act"), and, by the tenants, who sought relief under section 47 of the Act.

A representative for the housing society landlord attended the hearing, held by teleconference, on April 30, 2021 at 9:30 AM. Neither tenant, nor any representative for the tenants, attended the hearing, which ended at 9:41 AM. It should be noted that the tenants and the landlord both received a separate Notice of Dispute Resolution Proceeding which included identical hearing call-in information.

Preliminary Issue: One Month Notice to End Tenancy for Cause Withdrawn

The landlord's representative advised me that the landlord had rescinded the One Month Notice to End Tenancy for Cause ("Notice"), which the tenants had apparently filed an application to dispute, but for which they never served a copy of their Notice of Dispute Resolution Proceeding package on the landlord.

In any event, as the landlord has rescinded and cancelled the Notice, the tenancy shall continue until it is ended in accordance with the Act. Further, as there is no evidence that the tenants ever served the landlord with a copy of their Notice of Dispute Resolution Proceeding, their application for dispute resolution is dismissed, without leave to reapply (on the basis that the Notice is no longer in force).

Issues

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

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 1, 2015 and monthly rent was initially \$862.00. However, due to the tenants not providing required subsidy-related paperwork, the rent was adjusted to \$1,352.00 effective December 1, 2020. The tenants paid a security deposit of \$500.00. A copy of a written tenancy agreement was submitted into evidence.

The landlord's representative testified that the tenants are in rent arrears in the amount of \$2,472.00. This amount represents the difference between the original rent and the adjusted rent that the tenants have not been paying. The landlord submitted into evidence additional documentary evidence to support their claim for compensation.

Analysis

Section 26 of the Act requires a tenant to 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 their submission, that the tenants owe arrears for a difference between the lower rent and the higher rent that was the result of an adjustment based on a rent increase related to the tenant's income. (See section 2 of the *Residential Tenancy Regulation*.)

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.

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 their claim for \$2,472.00.

As the landlord was successful in its application, I grant an additional award of \$100.00 pursuant to section 72 of the Act to assist in the recovery of the filing fee cost.

Conclusion

I dismiss the tenants' application, without leave to reapply.

I grant the landlord's application for compensation.

I hereby grant the landlord a monetary order in the amount of \$2,572.00. This order, which is issued in conjunction with this decision, to the landlord, must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 30, 2021

Residential Tenancy Branch