



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR RR RP FFT OLC LRE ERP
OPR-DR MNR-DR FFL OPC MNRL-S

Introduction

In this cross-application for dispute resolution the tenants sought various relief under the *Residential Tenancy Act* ("Act") and the landlord also sought various relief. A dispute resolution hearing was held on October 1, 2021 and 9:30 AM and only the landlord attended. The hearing ended at 9:38 AM.

Preliminary Issue: (1) Non-Attendance of Tenants (2) Tenancy Has Ended

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. Given that the tenants failed to attend the hearing their application is therefore dismissed, without leave to reapply.

The landlord confirmed that the tenants vacated the rental unit near or around the end of July 2021. As such, he only sought a monetary order for the rent arrears.

Issue

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the landlord entitled to recover the cost of the filing fees?
3. Is the landlord entitled to retain the remaining security deposit?

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. It is noted for the record that the landlord was affirmed before providing evidence.

The tenancy began March 1, 2021 and ended, as mentioned, around the end of July 2021. Monthly rent was \$2,900.00 and this was due on the first day of the month. The tenants paid a security deposit of \$1,450.00. The landlord was authorized in a previous Residential Tenancy Branch decision to retain \$100.00 of the security deposit. Thus, the balance of the security deposit is \$1,350.00. There was no pet damage deposit.

The landlord gave oral evidence, supported by abundant documentary evidence, that the tenants did not pay rent for June or July 2021. Unpaid rent is thus \$5,800.00. The landlord seeks compensation in this amount plus \$300.00 in application filing fees.

Analysis

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 from the rent.

The landlord testified, and provided supporting documentary evidence, that the tenants did not pay rent for June and July 2021, as was required by the tenancy agreement. There is no evidence before me that the tenants had any right under the Act to not pay the rent for these months. (While the tenants in their application state that “We have the rent but [landlord] was rude,” this is not a legally justifiable reason for not paying rent.)

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I thus find on a balance of probabilities that the landlord has discharged his onus of proving a claim of \$5,800.00 for unpaid rent.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his applications, I grant him \$300.00 in compensation to cover the cost of the three filing fees. The total amount awarded is therefore \$6,100.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.”

As the tenancy ended a few months ago, I order and authorize the landlord to retain the remaining \$1,350.00 of the security deposit in partial satisfaction of the above-noted award.

The balance owing, \$4,750.00, is granted by way of a monetary order. This order is issued in conjunction with this decision, to the landlord. A copy of the monetary order must be served on the tenants.

If the tenants fail to pay the landlord within 15 days of receiving a copy of either the monetary order or this Decision, the landlord may pursue enforcement of the monetary order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application for a monetary order is granted.

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

Dated: October 1, 2021

Residential Tenancy Branch