



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 639111 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S FFL

Introduction

The landlord seeks compensation against their former tenants for unpaid rent, pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee pursuant to section 72 of the Act.

Preliminary Issue: Service

The landlord's agent attended the hearing, but the tenants did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's Rules of Procedure, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified under oath that he served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlord submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenants were each served with the Notice of Dispute Resolution Proceeding package by registered mail. It is noted that the address to which the landlord sent the package was the forwarding address provided by the tenants, is the address that appears on one of the tenant's driver's licenses, and, that the address is purportedly the address of the tenants' parents.

Given the evidence before me, it is my finding that the tenants were appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for them to participate fully in these proceedings.

Issue

Whether the landlord is entitled to compensation.

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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy ended on May 19, 2021. Monthly rent, nearer to the end of the tenancy and during the relevant period for which this application pertains, was \$4,800.00. (It was previously higher, but the landlord reduced it.) Rent was due on the first day of the month. The tenants paid a security deposit of \$3,000.00 which was half of the original \$6,000.00 rent) and which the landlord holds in trust pending the outcome of this application. A copy of a written tenancy agreement in evidence.

The agent gave evidence regarding, and confirmed, the above facts and explained that despite assurance that they would pay rent, the tenants never did. Ultimately, the tenants authorized the landlord to keep the security deposit to go toward the arrears.

Documentary evidence submitted in support of the landlord's claim included copies of correspondence between the parties, an NSF rent cheque, a monetary order worksheet, a notice to end tenancy for unpaid rent, and other documentation.

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's agent gave evidence that the tenants did not pay rent for April and May of 2021 in the amount of \$9,600.00. There is no evidence before me to make any factual or legal findings that the tenants had a right under the Act to not pay the rent.

Taking into careful 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 compensation for unpaid rent in the amount of \$9,600.00.

Section 38(4)(a) of the Act permits a landlord to retain a security deposit after the tenancy has ended if a tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant. In this case, the tenants provided written authorization for the landlord to retain the \$3,000.00 security deposit to go toward paying the unpaid rent. The balance of the rent arrears is, therefore, \$6,600.00.

Finally, as the landlord is successful in this application, they are awarded an additional \$100.00 in compensation to pay for the filing fee, pursuant to section 72 of the Act.

A monetary order in the amount of \$6,700.00 is issued to the landlord. This order is issued in conjunction with this decision, to the landlord. Should the tenants fail to pay the landlord the amount owed, then the landlord must serve a copy of the monetary order on the tenants and commence the collection process through the Provincial Court of British Columbia.

Conclusion

The application is granted.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 4, 2022

Residential Tenancy Branch