



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant SJ's Application filed December 4, 2014: MNDC

Landlord's Application filed December 31, 2014: MNR; MNSD; FF

Introduction

This matter was convened to hear cross applications. The Tenant SJ applied for compensation for damage or loss under the Act, regulation or tenancy agreement compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord applied for a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she sent copies of her Notice of Hearing documents by registered mail, sent December 12, 2014. She stated that she served the Landlord with her documentary evidence yesterday (June 22, 2015). I find that the Tenant did not provide the Landlord with copies of her documentary evidence within a reasonable time frame as provided in the Act and the Rules of Procedure. It is a fundamental principal of natural justice that a Respondent is entitled to know what evidence the Applicant is intending to rely on and that the Applicant must be provided with evidence a reasonable time before the Hearing in order that she can prepare to meet those allegations with evidence of her own. Therefore, I dismissed the Tenant's application with leave to reapply.

The Landlord testified that she provided both Tenants with copies of her Notice of Hearing documents and copies of her documentary evidence by registered mail. The Tenant SJ acknowledged receipt of the documents on January 6, 2015, on behalf of both Tenants. She stated that the Tenant JC was working and would not be signing into the Hearing.

Issues to be Decided

- Is the Landlord entitled to unpaid rent and loss of revenue?
- If so, may the Landlord apply the security deposit towards her monetary award?

Background and Evidence

This tenancy began on August 11, 2014. Monthly rent was \$800.00, due on the first day of each month. The Tenants paid pro-rated rent for the month of August in the amount of \$542.00. The Tenants also paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

Rent was paid in full for the month of September, 2014. The Landlord stated that she received \$400.00 of each month's rent from the Ministry on the Tenant SJ's account. The Landlord stated that the Tenant JC did not pay any rent for the months of October, November or December, 2014.

The Landlord testified that she posted a 10 Day Notice to End Tenancy on the Tenants' door on December 4, 2014, and that the Tenants moved out of the rental unit accordingly. She testified that the parties met to do a condition inspection at the end of the tenancy, on December 7, 2014.

The Tenant SJ stated that the Tenant JC paid "his share" of the rent, by cash. The Landlord denied receiving any rent other than that which was paid by the Ministry directly.

Analysis

I find, on the balance of probabilities, that the Tenants did not pay all of the rent when it was due under the tenancy agreement. The Tenants did not dispute the Notice to End Tenancy. The Tenants did not provide evidence that the full rent had been paid.

Section 26(1) of the Act provides:

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 a right under this Act to deduct all or a portion of the rent.

I find that the Tenants did not comply with Section 26 of the Act, that they had no right under the Act to deduct all or a portion of their rent, and that the Landlord suffered a loss as a result of the Tenants' noncompliance. Therefore, I allow the Landlord's application for a monetary award. I find that the Landlord is entitled to unpaid rent for

the months of October and November and loss of revenue for the month of December, 2014.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Monetary award	\$1,200.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,250.00
Less security deposit	<u>- \$400.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$850.00

Conclusion

The Tenant SJ's Application is **dismissed with leave to reapply**.

I hereby provide the Landlord with a Monetary Order in the amount of **\$850.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 6, 2015

Residential Tenancy Branch

