



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act ("Act"). The landlords applied for a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

Landlord "KN" attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that she served the tenants with the application for dispute resolution and notice of hearing by registered mail on August 10, 2015. An online search of the Canada Post website shows that both tenants signed for and collected the registered mail. The landlord also submitted the registered mail receipt.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlords' application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to retain the tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlords submitted a copy of the written tenancy agreement showing that that this tenancy began on September 1, 2014, that monthly rent was \$850.00, and the tenants paid a security deposit of \$425.00. The tenancy ended on or about April 30, 2015, according to the landlord.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued to the tenants, showing unpaid rent of \$2,400.00 owed as of April 1, 2015.

The landlords' evidence showed that the tenants vacated the rental unit, still owing the rent.

The landlords' monetary claim is \$2,875.00, which is comprised of the unpaid rent through April 2015 and the tenants' security deposit.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I find the landlords submitted sufficient, unopposed evidence that under the terms of the tenancy agreement and the Notice issued by the landlords, the tenants were obligated to pay rent, failed to pay the rent through April 2015, and vacated the rental unit owing this amount. I therefore grant the landlords a monetary award of \$2,400.00, as listed on the Notice.

As I explained at the hearing, the tenants' security deposit was a separate matter and could not form a part of a monetary claim as a security deposit is held by a landlord during a tenancy on behalf of the tenants. I therefore do not grant the landlords compensation for this claim.

Pursuant to section 72(1) of the Act, I grant the landlords recovery of their filing fee of \$50.00.

I therefore find that the landlords are entitled to a monetary award of \$2,450.00, comprised of unpaid rent of \$2,400.00 through April 2015, due to the tenant's breach of section 26 of the Act, and the \$50.00 filing fee paid by the landlords for this application, which I have granted them pursuant to section 72(1) of the Act.

At the landlords' request, I allow the landlords to retain the tenants' security deposit of \$425.00 in partial satisfaction of their monetary award.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2,025.00, which is enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlords' application has been successful, as they have been granted a monetary award of \$2,450.00, comprised of unpaid rent through April 2015 and the filing fee of \$50.00.

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 26, 2016

Residential Tenancy Branch

