



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR OPB OPN FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated October 27, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order of possession for breach of an agreement;
- a monetary order based on written notice provided by the Tenant; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and provided a solemn affirmation. The Tenants did not attend the hearing.

The Landlord testified that the Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence upon which the Landlord intended to rely, was served on the Tenant, in person, on October 28, 2016. In support, the Landlord submitted a Proof of Service form. Accordingly, I find that the Landlord's Application package was duly served on the Tenants on that date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenants vacated the rental unit on November 2, 2016, and that an order of possession is no longer required. The Landlord wished to withdraw this aspect of her Application. I grant the landlord's request and will not consider the Landlord's request for an order of possession further in this Decision.

In addition, it was observed that a tenant was named incorrectly on the Landlord's Application. Based on the evidence before me, this appears to be little more than a typographical error. Accordingly, pursuant to section 64(3) of the *Act*, I amend the Landlord's Application to include the Tenant's name as it appears on the tenancy agreement and the Mutual Agreement to End a Tenancy, dated October 30, 2016 (the "Mutual Agreement"), both of which were submitted into evidence by the Landlord.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted with the Landlord's documentary evidence. It confirms a fixed-term tenancy for the period from September 1, 2016 to August 31, 2017. Rent of \$980.00 per month was due on the first day of each month. The Landlord was provided with a security deposit of \$450.00.

However, pursuant to the Mutual Agreement, the parties agreed to end the tenancy on November 1, 2016, at 11:00 a.m. The Landlord testified the Tenants vacated the rental unit on November 2, 2016.

The Mutual Agreement also stipulated that the Tenants would pay October 2016 rent in two installments on November 28 and December 26, 2016. The agreement does not specify the amount of the payments but the Landlord testified there were to be two equal payments of \$490.00. According to the Landlord, the Tenants have not made any payments.

Finally, the Landlord requested recovery of the filing fee, and to apply the security deposit she retains to any monetary award granted.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord provided unchallenged oral testimony and documentary evidence in support of the amount of rent outstanding. Although duly served with notice of the dispute resolution hearing, the Tenants did not attend the hearing to refute the Landlord's evidence.

Accordingly, as per the Mutual Agreement, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$980.00.

Having been largely successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, and to apply the security deposit (\$450.00) to the amount of the monetary order.

Although the Landlord also applied to recover a late payment fee of \$20.00 per day, this fee was not provided for in the Mutual Agreement. In addition, the fee is contrary to section 7 of the *Residential Tenancy Regulation*. Accordingly, this aspect of the Landlord's claim is dismissed.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$630.00, which consists of \$980.00 in unpaid rent, plus \$100.00 as recovery of the filling fee, **less** the \$450.00 security deposit held by the Landlord.

Conclusion

I grant the Landlord a monetary order in the amount of \$630.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 15, 2016

Residential Tenancy Branch