



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. After being advised that his phone line was a little bit choppy, at 9:14 a.m. the tenant stated that he would disconnect from the hearing and call right back into the conference call. The line was held open until 9:20 a.m. but the tenant did not call back into the conference call. The tenant had provided his testimony in response to the landlord's claim prior to disconnecting.

Preliminary Issue – Amendment to Landlord's Application

The landlord sought to amend the amount of his monetary claim by including additional cleaning and damage related costs. As per Rules 4.1 and 4.3 of the Residential Tenancy Branch (the "Branch") Rules of Procedure (the "Rules"), an applicant may amend a claim by completing and submitting an Amendment to an Application for Dispute Resolution form directly to the Branch or through a Service BC office. The landlord did not complete or submit an Amendment form directly to the Branch or through a Service BC office.

The landlord's amendment request was not permitted and the landlord was advised he would be required to file a separate application for the additional claims.

At the outset of the hearing, the landlord also advised that he no longer is seeking an order of possession as the tenants have since fully vacated the rental unit.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on October 1, 2016 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenant paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is for outstanding rent in the amount of \$3750.00. The landlord testified that this includes unpaid rent for one half month's rent for March 2018 plus the full rent for April 2018 and May 2018. The landlord testified that the tenants failed to pay rent for the above period and did not vacate the rental unit fully until May 31, 2018. The landlord testified the tenants moved out themselves on May 1, 2018; however, the tenant left behind their dog and all their possessions.

The tenant acknowledged that the last of their belongings were not moved out until the end of May 2018. The tenant acknowledged that rent was outstanding and that they agreed to pay the outstanding rent to the landlord.

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 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 accept the landlord's claim for outstanding rent of \$3750.00 and find the tenants are responsible for this full amount as the tenant acknowledged rent was outstanding for the

period claimed by the landlord and the tenants did not fully vacate the rental unit until the end of May 2018.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3850.00.

The landlord continues to hold a security and pet deposit of \$1500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2350.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2350.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 25, 2018

Residential Tenancy Branch