



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0713524 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing served by registered mail sent on September 14, 2018. Copies of the Canada Post tracking numbers were provided as evidence.

The landlord’s agent testified that the also served a copy of the packages to the tenants, in person.

I find that the tenants have been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the landlord's agent requested to amended their application to include loss of rent for September 2108, and October 2018. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for subsequent loss of rent.

The landlord's agent testified that they do not need an order of possession as they have already obtained that order. The agent testified that the tenants have not vacated and they are waiting for the bailiffs to attend.

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2017. Rent in the amount of \$650.00 was payable on the first of each month. The tenants paid a security deposit of \$325.00.

The landlord's agent testified that the tenants have been in rent arrears almost from the start of the tenancy. The agent stated that the tenants ledger provides the full details of rent due and paid.

The landlord's agent testified that since filing their application rent for September 2018 and October 2018 are owed. The agent stated that the tenants did make a payment of \$685.00, in October. The landlord seeks to recover unpaid rent in the total amount of \$4,390.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 (1) of the Act states 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 undisputed evidence of the landlord's agent that the tenants have failed to pay rent as described in the tenants rent ledger. Filed in evidence is a copy of the tenant ledger.

I accept the undisputed evidence of the landlord's agent that the tenant further failed to pay rent for September 2018, and October 2018, and a payment of \$685.00 was made towards the outstanding arrears.

I find the tenants have breached the Act, when they failed to pay rent. I find the landlord has established that the tenants failed to pay rent in the total amount of **\$4,390.00**.

I find that the landlord has established a total monetary claim of **\$4,490.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$325.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,165.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: October 23, 2018

Residential Tenancy Branch