



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

On August 9, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for unpaid rent, dated August 2, 2018, (the “Notice”) and to obtain an Order for emergency repairs.

On August 13, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlords requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

The Landlord and Representatives attended the conference call hearing; however, the Tenants did not attend at any time during the 31-minute hearing. The Landlord HZ testified that he personally served the Tenants with the Notice of Hearing by hand delivering a copy to the Tenants at the rental unit on August 15, 2018. I find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act. The Landlord was affirmed to be truthful in their testimony.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Applications were considered along with the evidence as presented by the Landlord.

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 Matters

The Landlord SS stated she is no longer pursuing an Order of Possession as she has already been granted one for September 30, 2018, as a result of a previous Dispute Resolution hearing. The Landlord would like to amend her Application and only include the monetary claim for unpaid rent. In accordance with Section 64(3) of the Act, I have amended the Landlord's Application by removing the request for an Order of Possession.

As the Tenants did not attend the hearing and the Landlord did not pursue an Order of Possession, I dismiss the Tenants Application to cancel the Notice and to obtain an Order for emergency repairs without leave to reapply.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be reimbursed for the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The one-year fixed term tenancy began on December 22, 2017. The monthly rent of \$3,600.00 was due on the first of each month and the Landlord collected a security deposit of \$1,800.00.

The Landlord testified that the Tenants began paying their monthly rent in cash and then paid their April 2018 rent by e-transfer. As of May 2018, the Tenants failed to pay their rent. The Landlord supplied copies of text messages that demonstrated the excuses and ongoing failure of the Tenants to pay their rent.

The Landlord stated that they went through a Dispute Resolution Hearing on July 27, 2018 where they obtained an Order of Possession for the rental unit, based on a 10-

Day Notice to End Tenancy for Unpaid Rent. The Order of Possession is for September 30, 2018.

As the Landlord is expecting to remove the Tenants from the rental unit, the Landlord is now claiming for a monetary loss of rent from May through to September 2018 for a total amount of \$17,950.00.

Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 26 of the Act explains that the Tenants 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 Tenants have a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenants had a right under this Act to deduct any of their rent, I find that the Tenants are in breach of Section 26 of the Act.

I accept the Landlord's undisputed testimony and evidence that the Tenants have not paid their rent since May 2018 and are currently in arrears in the amount of \$17,950.00 as claimed in the Landlord's Application. I, therefore, find that the Landlord has established a monetary claim for unpaid rent.

The Landlord's Application has merit and I find that the Landlord should be reimbursed for the filing fee.

Conclusion

The Landlord has established a monetary claim, in the amount of \$18,050.00, which includes \$17,950.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit of \$1,800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$16,250.00 in accordance with Section 67 of the Act. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: October 01, 2018

Residential Tenancy Branch