



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlords originally applied by way of direct request proceeding, which was adjourned to a participatory dispute resolution hearing. The landlords sought the following remedies under the Act:

1. an order of possession;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened at 11:00 A.M. on October 22, 2018, and the landlords and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses. The parties did not raise any issues with respect to the service of the Notice of Dispute Resolution Proceeding.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the landlords entitled to an order of possession for unpaid rent?
2. Are the landlords entitled to a monetary order for unpaid rent?
3. Are the landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlords testified that the tenancy began on January 1, 2017, and monthly rent is currently \$1,456.00, which is due on the first of the month. Previously, rent was \$1,400.00, though this increased after one year. The tenant paid a security deposit in the amount of \$700.00. There is no pet damage deposit. The present landlords took over the tenancy on May 7, 2018.

Regarding their claim, the landlords are seeking compensation for unpaid rent for the months of July, August, September, and October 2018, for a total of \$5,824.00. In addition, they seek \$100.00 in compensation for recovery of the filing fee.

There are a few 10 Day Notices to End Tenancy for Unpaid Rent and Utilities that the landlord issued, the most recent 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and Utilities being served on the tenant by registered mail, being mailed on September 13, 2018.

The tenant did not dispute the amount of rent owing, and agreed with the landlord's submission in this regards. However, the tenant submitted that internet was previously included in the tenancy agreement but was not provided for a few months of summer. As such, she requested that the amount she paid for the internet (\$50.00 a month) for part of May and all of June, July, and August 2018, be deducted from the amount of unpaid rent. The landlord submitted that it was only two months, June and July 2018, that she had to pay for, but did not have an issue with the slightly higher amount.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlords testified, and provided documentary evidence to support their submissions, that the tenant did not pay rent for the months of July to October 2018, inclusive, and that \$5,824.00 is currently owed. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice, or any of the 10 Day Notices to End Tenancy for Unpaid or Utilities that were served on the tenant, for that matter.

Taking into consideration the undisputed oral testimony of the parties, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim that the tenant owes \$5,824.00 in rent and late fees.

As the landlords are successful in their claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee.

In regard to the cost of the internet that the tenant requested be deducted from the total amount owing, the tenant sought to have deducted close to four months' worth of internet costs, while the landlord submitted that two months (June and July) is the correct period of time. The landlord stated, however, that he would be willing to "eat" the four months' worth of costs. That said, this is the landlords' application. If the tenant had sought to be fully compensated for the loss of the value of the rent due to internet not being provided, she had the right under the Act to apply for dispute resolution. She did not. For this reason, I am inclined to deduct from the total amount owing only two months' worth of internet costs in the amount of \$100.00.

I hereby order that the landlords retain the security deposit in the amount of \$700.00 in partial satisfaction of the award.

A total monetary order of \$5,124.00 for the Landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$5,824.00
Filing fee	100.00
<i>LESS</i> internet costs	(100.00)
<i>LESS</i> security deposit	(\$700.00)
<u>Total:</u>	<u>\$5,124.00</u>

Regarding the order of possession sought by the landlord, 55(2)(b) of the Act states that

A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlords applied for dispute resolution seeking an order of possession, the landlords issued a notice to end the tenancy, the tenant did not dispute the Notice, and the time for making that application had expired. Therefore, I grant the landlords an order of possession.

Conclusion

I grant the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant the landlords a monetary order in the amount of \$5,124.00, which must be served on the tenant. The 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 Act.

Dated: October 22, 2018

Residential Tenancy Branch