



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 5, 2018 wherein the Landlord sought monetary compensation from the Tenant for unpaid rent and recovery of the filing fee.

The hearing came before me as a Review Hearing. The parties missed the original hearing date due to a scheduling error at the Residential Tenancy Branch. Having failed to attend the hearing the Landlord's Application was dismissed with leave to reapply. The Landlord applied for and was granted Review Consideration by Decision dated October 1, 2018. The presiding Arbitrator granted the Landlord a new hearing.

The Review Hearing convened by teleconference before me at 9:30 a.m. on November 16, 2018. Only the Landlord called into the hearing.

A review of Branch Records confirms that both parties were informed of the November 16, 2018 hearing by way of email. As such, I proceeded with the hearing in the Tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for loss of rent?

2. Should the Landlord be authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

In support of his claim the Landlord testified as follows. He stated that the tenancy began October 1, 2017. Monthly rent was \$1,050.00 and the Tenant paid a security deposit in the amount of \$525.00.

The Tenant failed to pay rent for January 2018 and the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord stated that the Tenant also failed to pay rent for February 2018 and moved out on February 8, 2018.

The Landlord was able to re-rent the rental unit as of March 1, 2018 such that he suffered a loss of rent for two months.

Analysis

Based on the undisputed testimony and evidence of the Landlord and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that the Tenant failed to pay rent for January 2018.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find the Tenant had no authority under the *Act* to not pay rent.

I also accept the Landlord's evidence that the Tenant vacated the rental unit on February 8, 2018 such that the Landlord was not able to re-rent the unit until March 2018.

I find the Landlord is entitled to recover from the Tenant the unpaid January and February 2018 rent in the amount of **\$2,100.00** ($\$1,050.00 \times 2 = \$2,100.00$).

As the Landlord has been successful in his application I find he is also entitled to recover the filing fee of **\$100.00** for a total monetary award of **\$2,200.00**.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$525.00 security deposit towards the amounts awarded and I grant him a Monetary Order in the amount of **\$1,675.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Decision and Order of September 11, 2018 is hereby set aside.

The Landlord's request for monetary compensation for unpaid rent and recovery of the filing fee is granted. The Landlord may retain the Tenant's security deposit towards the amounts awarded and is granted a Monetary Order in the amount of **\$1,675.00** 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: November 16, 2018

Residential Tenancy Branch