



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S MNRL-S OPR

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord sought the following remedies:

1. an order of possession for unpaid rent;
2. compensation for unpaid rent;
3. compensation for damage to the rental unit; and,
4. compensation for recovery of the filing fee.

A dispute resolution hearing was convened, and the landlord and the tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of documents.

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. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid rent?
3. Is the landlord entitled to compensation for damage to the rental unit?
4. Is the landlord entitled to compensation for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced in November 2017, that monthly rent is \$900.00, and that the tenants paid a security deposit of \$450.00. In respect of her application, the landlord's main argument is that the tenants have failed to pay any rent for the better part of the last year, and that they currently owe \$7,950.00 in arrears. There was no written tenancy agreement submitted into evidence, though the tenants did not dispute this portion of the landlord's testimony.

The landlord also claimed for damages caused to the rental unit by the tenants but did not submit any photographs of the damage nor any documentation establishing a value for that damage.

The landlord testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent on April 15, 2018, though no copy of the 10 Day Notice was submitted into evidence. On August 15, 2018, the tenants sent a letter to the landlord advising her that they would vacate the rental unit by the end of the month. This letter was handwritten, dated, and signed by both tenants, but did not indicate the address of the rental unit. A copy of the letter was submitted by the landlord into evidence. The landlord further testified that she has given them several written notices and that the tenants have also given her several written notices regarding their intentions to vacate the rental unit.

The tenant (D.R.) testified that he is on disability and that his disability cheques get sent directly to the landlord, the cheques are made out to her, and that they have therefore paid rent. Indeed, he testified that the landlord has placed a hold on mail delivery to the rental unit and that he would be unable to acquire the cheques in any event, even if they were sent to him.

The tenant further testified that "we have been paying rent, [and we're] trying to work it off," but did not specify as to what amount this was or for what rent amount.

In her final submission, the landlord noted that if the cheques are being cashed by someone other than her (as was alleged by the tenants), that the tenants ought to submit evidence of this, and that there ought to be some sort of printouts in this regard.

In the tenants' final submission, the tenant (C.K.) testified that "we do plan on paying what we think we owe, but it will take time." I asked her what that amount is and she testified that it would be three months' worth of rent.

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.

Re Order of Possession

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and 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 landlord did not submit a copy of any notice to end the tenancy—which is required for an arbitrator to issue an order of possession in cases such as these where the tenants dispute a landlord’s claim of unpaid rent—and as such I cannot issue an order of possession under this section of the Act. As such, I dismiss this aspect of the landlord’s application with leave to reapply.

Re Claim for Compensation

Regarding the landlord’s claim for compensation for damage to the rental unit, section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?

4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, as the landlord has submitted no documentary evidence of any purported damage to the rental unit, and no documentary evidence establishing the amount or dollar value of that damage, I do not find that the landlord has proven three of the above-noted criteria that are required in order for me to consider granting an order for compensation.

Given the above, I dismiss this aspect of the landlord's application with leave to reapply. As I noted during the hearing, the landlord may apply for compensation for any potential damage to the rental unit after the tenancy has ended.

Re Claim for Unpaid Rent

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

In this case, the landlord claims that the tenants have not paid rent for almost a year, and the amount of rent arrears is now \$7,950.00. The tenants dispute this claim, and testified that they *have* paid rent, though they rather oddly commented that they "did plan on paying her" and that "we do plan on paying what we think we owe," without providing specifics. Though the female tenant said that it is about three months' worth of rent "by myself," which I take to mean her half of the rent for three months, without any indication as to which months those are.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any additional, documentary evidence that the tenants have failed to pay rent.

While I appreciate that the landlord commented on her "not being good with computers," and difficulty (or confusion) as to how to send evidence to the Residential Tenancy Branch, I also note that the landlord was capable of completing and submitting three separate pieces of documentary evidence to the ServiceBC office. There is no evidence

such as a bank account printout, or a rent ledger, or anything else that might reveal financial transactions (or lack thereof) between the landlord and the tenants. The landlord referred to the tenants' communication to her regarding unpaid rent, but none of this evidence was submitted. In the complete absence of any documentary evidence, I do not find on a balance of probabilities that the landlord has proven her claim for unpaid rent. As such, I dismiss this aspect of her claim with leave to reapply.

As the landlord was unsuccessful in her application I do not grant a monetary award for recovery of the filing fee.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: December 20, 2018

Residential Tenancy Branch