



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL
 CNR, ERP, LRE, MNDCT

Introduction

This hearing convened as a result of Cross Applications.

In the Landlord's Application, filed on December 13, 2018, the Landlord sought an Order of Possession, Monetary compensation for unpaid rent and recovery of the filing fee.

In the Tenant's Application, filed on December 14, 2018, the Tenant sought an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 5, 2018 (the "Notice"), an order that the Landlord make emergency repairs to the rental unit, an order that the Landlord be restricted from entering the rental unit and monetary compensation from the Landlord in the amount of \$500.00.

The hearing was scheduled for teleconference at 11:00 a.m. on January 24, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Naming of Parties

At the outset of the hearing the Landlord confirmed the spelling of her last name. Section 64(3)(c) allows me to amend an Application for Dispute Resolution in the event of such spelling errors. As such, I amend the Tenant's Application for Dispute Resolution to accurately spell the Landlord's surname.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims. As such relief was sought in the applications before me they were scheduled as priority hearings.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

The parties confirmed that the Tenant vacated the rental unit on December 15, 2018, which was also the same date as the effective date of the Notice. As the Tenant vacated the rental unit the Landlord's request for an Order of Possession and the Tenant's request for an Order for emergency repairs and an Order limiting the Landlord's right to enter the rental unit were no longer applicable.

Preliminary Matter—Correction

Section 78(1.1) of the *Residential Tenancy Act* provides that the director may correct a Decision to deal with an obvious error or inadvertent omission in a decision or order on the director's own initiative. As a delegate of the Director, this section applies to Arbitrators.

During the hearing I advised the parties that I would not make an Order with respect to the Landlord's claim for unpaid rent, or her request to retain the security deposit towards any amounts owed. After further consideration and reflection, I find that to be an inadvertent omission requiring correction pursuant to section 78 of the *Act*.

As noted above, *Rule 2.3* provides that an Arbitrator may exercise their discretion to sever out unrelated claims. While the Tenant's claim for monetary compensation is unrelated to the Notice, I find that the Landlord's claim for unpaid rent is necessarily related to the Notice.

Further, section 72 of the *Act* allows an Arbitrator to deduct any amounts payable from the Tenant's deposits and reads as follows:

72...(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

...

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Issues to be Decided

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

Should the Landlord be authorized to retain the Tenant's security deposit and pet damage deposit towards any amounts awarded to the Landlord for unpaid rent?

Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began October 1, 2018. Monthly rent was payable in the amount of \$875.00 on the 30th day of the month preceding the month for which rent was payable. The Tenant failed to pay rent on November 30, 2018 as required, following which the Landlord issued the Notice. The Tenant confirmed that she did not pay rent for December 2018, however, she submitted that as she vacated the rental unit on December 15, 2018 (the effective date of the Notice), she believes she should not be expected to pay rent for the full month of December.

The Landlord alleged the Tenant agreed she could retain the Tenant's security deposit and pet damage deposit towards cleaning and repair costs to the rental unit. This was disputed by the Tenant.

The Landlord also stated that the rental unit was left in such a state that it could not be rented at the end of the tenancy.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

Section 26 of the *Residential Tenancy Act* provides in part as follows:

26 (1) 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.

The parties agreed that the Tenant failed to pay rent for December 2018.

While the Tenant vacated the rental unit on December 15, 2018, I find the Landlord suffered a loss of rent for the month as the Landlord was not able to advertise the rental

unit to others until she was certain the tenancy had ended. I therefore award the Landlord recovery of the December 2018 rent in the amount of \$875.00.

As the Landlord has been successful in her application, I also award her recovery of the \$100.00 filing fee for a total award of **\$975.00**.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$875.00 security deposit and pet damage deposit and I grant her a monetary Order for the balance due in the amount of **\$100.00**. 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 Tenant's request to cancel the Notice and the Landlords' request for an Order of Possession is dismissed as the Tenant vacated the rental unit.

The Tenant's claim for an order that the Landlord make emergency repairs and be restricted from entering the rental unit is dismissed.

The Tenant's monetary claim is dismissed with leave to reapply.

The Landlord's request for monetary compensation for unpaid rent for December 2018 and recovery of the filing fee is granted.

The Landlord is at liberty to apply for further loss of rent and the cost to clean and repair the rental unit as the case may be.

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: January 28, 2019

Residential Tenancy Branch