



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on October 11, 2018. The landlord seeks compensation under sections 67 and 72 of the Act for:

1. Unpaid rent and utilities for September and October 2018;
2. registered mail, gas, documents and witness fees; and,
3. the Residential Tenancy Branch filing fee.

A dispute resolution hearing was convened on February 7, 2019 and the landlord and two interpreters attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend.

The landlord, through his interpreters, testified that the landlord served the tenants with the Notice of Dispute Resolution Proceeding package (the "package") by way of registered mail on October 11, 2018. The tenants refused to claim the package, which was returned to the landlord on November 1, 2018. Based on the foregoing I find that the tenants were served with the Notice of Dispute Resolution Proceeding package in compliance with section 89 of the Act.

While I have reviewed and considered all oral evidence, I note that neither party submitted any documentary evidence in respect of the landlord's application.

Issues

Is the landlord entitled to compensation as claimed?

Background and Evidence

The landlord (through his interpreters) testified that the tenancy commenced on February 1, 2018 and ended when the tenants vacated the rental unit on November 21, 2018. Monthly rent was \$1,600.00 and the tenants paid a security deposit of \$800.00,

which the landlord currently retains.

The landlord seeks compensation for unpaid rent for August, September and October 2018, in the amount of \$4,800.00, and unpaid rent for twenty-one days in November 2018 in the amount of \$1,120.00. They also seek compensation in the amount of \$473.70 for utilities between June and November 21, 2018. And, they seek compensation in the amount of \$100.00 for the filing fee for this application.

The landlord also sought compensation for registered mail costs, for gas, and for witness fee. I explained that I would be unable to grant compensation for what are generally considered to be the costs of litigation, other than for the filing fee.

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 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, the tenants failed to pay rent and utilities as required by the tenancy agreement and by the Act. But for the failure of the tenants to pay the rent and utilities the landlord would not have suffered the loss of rent and utilities. Through the undisputed oral evidence of the landlord, the landlord has proven the amount of the rent and utilities. Given that rent is set by the tenancy agreement and given that utilities are calculated in proportion to the tenant's use, as explained by the landlord, the issue of whether the landlord has done whatever is reasonable to minimize this loss is a

negligible factor. In other words, the tenants were legally responsible for paying the rent and utilities, and they did not.

Taking into consideration all the undisputed oral testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for compensation.

The landlord is hereby ordered to retain the entire amount of the security deposit in partial satisfaction of the compensation awarded. A monetary order of \$5,693.70 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$5,920.00
Unpaid utilities	473.70
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$800.00)
Total:	\$5,693.70

Conclusion

I grant the landlord a monetary order in the amount of \$5,693.70, which must be served on the tenants. 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 pursuant to section 9.1(1) of the Act.

Dated: February 7, 2019

Residential Tenancy Branch