



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 12, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit and/or pet damage deposit;
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified the Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt on November 14, 2018. Therefore, I find the Application package was received by the Tenant on that date. The Tenant did not submit documentary evidence in response to the Application.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, 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 a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to retain the security deposit and/or pet damage deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the fixed-term tenancy began on August 1, 2018, and was expected to continue to June 30, 2019. Rent in the amount of \$2,000.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,000.00, which the Landlord holds. A copy of the fixed-term tenancy agreement between the parties was submitted into evidence.

The Landlord testified the tenancy ended when the Tenant vacated the rental unit at the end of September 2018. Further, he testified the Tenant did not pay rent when due on August 1 and September 1, 2018, and that rent in the amount of \$4,000.00 is outstanding.

In reply, the Tenant testified that she vacated the rental unit on September 1, 2018. The Tenant submitted she should not have to pay the outstanding rent because the Landlord made attempts to change the locks to the rental unit, and allowed others to access the rental unit.

In response, the Landlord referred to a decision issued on October 11, 2018. The file number of the related decision is included above for ease of reference. The decision confirms that the Tenant vacated the rental unit by October 11, 2018, but does not make any specific finding with respect to the date she did so.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 45 of the *Act* confirms that a tenant may not end a fixed term tenancy by giving the landlord notice to end the tenancy before the date specified in the tenancy agreement as the end of the tenancy, other than as permitted under the *Act*.

Section 26 of the *Act* confirms 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 the *Act* to deduct all or a portion of the rent.

In this case, I find that rent in the amount of \$2,000.00 per month was due on the first day of each month. Further, I accept the Landlord's testimony (and the Tenant's acknowledgement) confirming rent was not paid when due on August 1 and September 1, 2018. The Tenant acknowledged during the hearing that she continued to occupy the rental unit on September 1, 2018.

As described in *Background and Evidence*, above, the Tenant asserted she should not be required to pay rent in accordance with the fixed-term tenancy agreement because of the Landlord's alleged actions. However, these allegations were not supported by documentary or digital evidence, or with witness testimony in support. Therefore, I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct all or a portion of the rent based on the alleged actions of the Landlord. Again, I note the Tenant did not submit any documentary or digital evidence in response to the Application, despite having ample opportunity to do so.

In light of the above, I find the Landlord has demonstrated an entitlement to recover unpaid rent in the amount of \$4,000.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. In addition, I find it is appropriate in the circumstances to permit the Landlord to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$4,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,000.00)
TOTAL:	\$3,100.00

During the hearing, the Tenant made several references to her own application to recover the security deposit from the Landlord. The Tenant was advised during the hearing that the matter was not before me and that it would be inappropriate to provide her with advice during the hearing. However, the Tenant was informed that if I determined that the Landlord was entitled to a monetary order for unpaid rent, the security deposit would likely be applied to the amount of the award in partial satisfaction of the Landlord's claim. As noted above, the above calculation reflects my decision to do so. If either party has questions about this decision, they are invited to contact an information officer at the Residential Tenancy Branch, tel. (604) 660-1020, or email HSRTTO@gov.bc.ca.

Conclusion

The Landlord is granted a monetary order in the amount of \$3,100.00. The monetary 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 *Residential Tenancy Act*.

Dated: March 15, 2019

Residential Tenancy Branch