



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from information on the Application for Dispute Resolution that the Landlord is also seeking compensation for repairing a leak and that matter will be considered at these proceedings.

The Agent for Landlord stated that on January 11, 2019 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on January 11, 2019 were sent to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

As the Tenant was served with the aforementioned documents, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

The Agent for the Landlord was provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. He was advised of his legal obligation to speak the truth at these proceedings.

Preliminary Matter

The Application for Dispute Resolution includes a claim for unpaid rent from December of 2018 and January of 2019.

At the hearing the Agent for the Landlord stated that the Landlord was also claiming compensation for unpaid rent from October and November of 2018. When the Agent was asked why those claims were not included on the Application for Dispute Resolution he stated that:

- the Landlord previously filed an Application for Dispute Resolution seeking compensation for unpaid rent for October and November of 2018;
- the Residential Tenancy Branch canceled the pervious Application for Dispute Resolution; and
- the Residential Tenancy Branch told the Landlord that the claim for compensation for rent for October and November would be considered at the proceedings on May 03, 2019.

The Agent for the Landlord repeated the aforementioned information on at least three occasions. As the information provided by the Agent for the Landlord did not seem correct, he was asked to provide the file number for the Application for Dispute Resolution in which the Landlord filed a claim for rent for October and November. That file number appears at the bottom of the first page of this decision.

During the hearing I checked Residential Tenancy Branch records and determined that:

- the Landlord had previously applied for unpaid rent for October and November of 2018, via a direct request proceeding;
- the Landlord had applied for an Order of Possession, via a direct request proceeding;
- on January 17, 2019 the Landlord was granted an Order of Possession for the rental unit;
- the Order of Possession was granted on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent that was posted on the door of the rental unit on November 13, 2018;
- the Adjudicator determined that the corrected effective date of the was November 26, 2018;
- the Adjudicator determined that the Ten Day Notice to End Tenancy was not disputed by the Tenant; and

- on January 17, 2019 the Landlord was granted a monetary Order for \$9,000.00, which included compensation for rent for October and November of 2018.

As the Landlord has already been granted compensation for rent for October and November of 2018, that matter was not considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to compensation for repairing a leak?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on July 23, 2018;
- the Tenant was required to pay monthly rent of \$4,450.00 by the first day of each month;
- the Tenant was still living in the rental unit when he went there on January 11, 2019;
- he does not know when the rental unit was vacated but it was vacant when he went to the unit on January 17, 2019; and
- the Tenant did not pay any rent for December of 2018 or January of 2019.

The Landlord is seeking compensation for unpaid rent for December of 2018 and January of 2019, in the amount of \$8,900.00.

The Landlord is seeking compensation for repairing a leak, in the amount of \$2,782.50. In support of this claim the Agent for the Landlord stated that:

- the Tenant reported a leak sometime in November of 2018;
- the leak was related to a broken pipe under the garage;
- he does not know why the pipe broke;
- on November 13, 2018 the Landlord gave the Tenant written notice that the Landlord would be entering the unit to repair the leak;
- on November 15, 2018 the Tenant informed the Landlord, via email, that they should not proceed with the repairs as the Tenant did not want them to enter the unit;
- the Landlord did not enter the unit to make the repairs, as he did not think he had the right to enter the unit; and
- the leak has still not been repaired, as the Landlord does not consider it an urgent matter.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$4,450.00 by the first day of each month.

On the basis of the findings in the previous proceedings, I find that the Tenant was required to vacate the rental unit on November 26, 2018 in accordance with the Ten Day Notice to End Tenancy that was posted on her door on November 03, 2018.

As the Tenant did not vacate the rental unit on November 26, 2018, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between November 26, 2018 and November 30, 2018, I find that the Landlord has been fully compensated for that period.

On the basis of the undisputed evidence I find that the Tenant occupied the rental unit for the entire month of December of 2018. I therefore find that the Tenant must pay rent for December, in the amount of \$4,450.00.

On the basis of the undisputed evidence I find that the Tenant occupied the rental unit until at least January 11, 2019. I therefore find that the Tenant must pay rent for those 11 days, at a daily rate of \$143.55, which equates to \$1,579.05.

I am unable to award compensation for any period after January 11, 2019, as the Agent for the Landlord does not know if the rental unit was occupied after that date.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. As there is no evidence that the pipe that broke during this tenancy was damaged as the result of the actions or neglect of the Tenant or the Tenant's guest, I cannot find that the Tenant was obligated to repair the pipe.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord suffers a loss as the result of the tenant breaching a section of the *Act*. Even if I accepted that the Tenant's actions delayed the repair of the broken pipe, the Landlord has submitted no evidence to show that the delay resulted in a financial loss for the Landlord. Regardless of whether the pipe was repaired in November of 2018 or after the tenancy ended, there is no evidence before me that the cost of the repair would

have been different. As the Landlord has failed to establish that they suffered as a result of a delayed repair, I dismiss the Landlord's claim for repairing the pipe.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$6,129.05 which includes \$6,029.05 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$6,129.05. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 07, 2019

Residential Tenancy Branch