



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR FFT LAT LRE RP
 For the landlord: FFL MNDCL-S MNDL-S MNRL-S OPR

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on April 12, 2019, and sought orders pertaining to the following matters: (1) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”); (2) for a lock change authorization; (3) for regular repairs; (4) for the restriction or suspension of landlord’s right to enter the rental unit; and, (5) for the recovery of the filing fee.

The landlord applied for dispute resolution on April 26, 2019 and sought orders pertaining to possession of the rental unit for unpaid rent, compensation for unpaid rent, for repairs to a clothes dryer, for NSF charges, and for the cost of the filing fee. They sought to retain the tenant’s security deposit should an award be granted for the claimed compensation.

The landlord’s agent and his assistant attended the hearing before me and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend. As the tenant was an applicant in this hearing I did not raise the issue of whether they were aware of the hearing, as she received a copy of the Notice of Dispute Resolution Proceeding as part of her application.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision.

Preliminary Issue: Non-Attendance of Tenant and Dismissal of Application

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. As the tenant failed to attend the hearing and present her case, I dismiss her application without leave to reapply.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid rent, for the cost of the dryer repair, and for the cost of NSF charges?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord's agent (the "landlord") testified that the tenancy began on November 1, 2018 and was to be a fixed-term tenancy ending on October 31, 2019, and then a month-to-month tenancy thereafter. Monthly rent, which is due on the first of the month, is \$1,800.00. The tenant paid a security deposit of \$800.00, which the landlord currently retains. A copy of the written tenancy agreement was submitted into evidence.

On April 4, 2019 the landlord issued and served the Notice on the tenant's door for rent that was due on April 1, 2019 in the amount of \$1,800.00. A copy of the Notice was tendered into evidence. To date, the tenant has not paid any rent for April 2019 and has not paid rent for May 2019; the tenant is now in arrears in the amount of \$3,600.00 for unpaid rent.

The landlord has also incurred two NSF charges of \$25.00 for April and May 2019 because of the tenant not having the rent. A copy of a bank statement submitted into evidence indicates the returned insufficient funds transaction.

In addition, the landlord seeks \$147.00 for the cost of an appliance repair technician to repair a clothes dryer that the tenant purportedly damaged. In his application as it pertains to the particulars of this claim, the landlord stated that

The tenant reported the dryer was making a loud noise on January 24, 2019. The dryer was repaired on March 1, 2019. The technician reported that the fan blower was blocked by lady's underwear. The lint filter was not in the right place. Problem was fixed. Tested ok. The issue was not due to normal wear and tear

which should be charged back to the tenant. The tenant failed to pay for the repair.

A copy of the repairperson's invoice was submitted into evidence.

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.

Order of Possession 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. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if she paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support his submission, that the tenant did not pay rent when it was due on April 1, 2019. She has also failed to pay rent for May 2019. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent. And, while the tenant applied in time to cancel the Notice, she failed to attend the hearing to dispute the Notice.

Taking into consideration all the undisputed oral testimony and documentary evidence 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 their claim for an order of possession for unpaid rent.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having reviewed the Notice, I find it complies with section 52 of the Act. As such, I grant the landlord an order of possession pursuant to section 55 of the Act.

Compensation for Unpaid Rent, Dryer Repair, and NSF Charges

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.

In this case, the tenant failed to comply with section 26 of the Act which requires her to pay rent when it is due. On that basis, I grant the landlord a monetary award of \$3,600.00 for unpaid rent. In addition, the tenant's failure to comply with section 26 of the Act resulted in the landlord incurring \$50.00 (\$25.00 on two occasions) in NSF charges. I award the landlord \$50.00 for those costs.

Regarding the dryer repair costs, section 32(3) of the Act states that

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Here, the landlord testified that the tenant caused damage to the clothes dryer. Due to the tenant's negligence in improperly putting back the lint filter, her underwear got caught in the vent which caused damage. But for the tenant's breach of section 32(3) of the Act the landlord would not have incurred a cost of \$147.00 to repair the machine.

As such, I grant the landlord a further award of \$147.00 for this claim.

Compensation for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the landlord was successful I grant his claim for reimbursement of the filing fee in the amount of \$100.00

Summary of Monetary Award and Order

A total monetary award of \$3,897.00 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$3,600.00
NSF charges	50.00
Clothes dryer repair cost	147.00
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$900.00)
Total:	\$2,997.00

I order that the landlord may retain the tenant's security deposit of \$900.00 in partial satisfaction of the above-noted award. A monetary order of \$2,997.00 is granted to the landlord for the balance of the award.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$2,997.00, which must be served on the tenant. This 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 of the Act.

Dated: May 30, 2019

Residential Tenancy Branch