



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution filed on April 30, 2019, wherein the Landlords requested an Order of Possession and Monetary Compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 15, 2019 (the "Notice"), authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 9:30 a.m. on May 21, 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed at the outset of the hearing that the Landlords obtained an Order of Possession approximately two weeks prior to the hearing before me. . A review of branch records confirms that an Order was made on May 13, 2019 in a separate hearing; the file number for that matter is recorded on the unpublished cover page of

this my Decision. As the Landlords have already obtained an Order of Possession, such relief was no longer required.

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants for unpaid rent?
2. What should happen with the Tenants security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began February 1, 2013. At that time monthly rent was payable in the amount of \$900.00. The Landlord's Agent confirmed that the rent was not raised and remains \$900.00. The Tenants paid a \$450.00 security deposit.

The Notice was provided in evidence and confirmed that the sum of \$2,550.00 was outstanding for rent at the time the notice was issued.

The Landlords also prepared a Monetary Orders Worksheet in which they detailed the amounts outstanding for rent as follows:

March 2018	\$450.00
April 2018	\$900.00
September 2018	\$300.00
October 2018	\$900.00
TOTAL CLAIMED	\$2,550.00

The Landlord's Agent testified that the Tenants were personally served the Notice on March 16, 2019. The Landlord's Agent further testified that the Tenants did not pay the \$2,550.00, nor did they apply to dispute the Notice within the 5 days required.

The Landlord's Agent confirmed that the Tenants paid the April and May 2019 rent.

In response to the Landlords submissions, the Tenant, D.B., stated that she moved into the rental property on February 1, 2012.

D.B. claimed that she did not receive the Notice in March of 2019. D.B. also stated that she has always paid her rent and has receipts to prove it; those receipts were not before me as D.B. claimed they were with an advocate. She stated that she expected her advocate to call into the hearing on her behalf and that she was "supposed to make an appointment with the advocate".

The Tenant L.B. also testified. She confirmed that they received the Notice of Dispute Resolution indicating that there would be a hearing on May 21, 2019. She confirmed that they received the Notice on May 2, 2019.

L.B. stated that she pays the rent directly to the Landlord in cash, as they have always done. She further stated that the Landlords always provide receipts for their cash payments. In terms of whether they paid the full amount of rent or only \$450.00 in March 2018, L.B. stated that she wasn't sure. She also was not able to provide any response to the Landlords claim that they failed to pay the full amount of rent for April 2018, September 2018 and October 2018.

L.B. then stated they fixed the entire bathroom and the Landlord told her that then that would not have to pay rent for a month. She was not able to say which month, only to say that the bathroom was fixed shortly after they moved in.

During the hearing, D.B., insisted on talking about the May 13, 2019 hearing in which the Landlords were granted an Order of Possession as she claimed she was never given notice of that hearing and the address on the Order was incorrect. I informed her that I had no authority to deal with the Order of Possession of May 13, 2019. A review of branch records confirms the Landlords requested a correction of that Order pursuant to section 78 of the *Act*. D.B. claimed that she did not understand what was going on and that she had never been before the Residential Tenancy Branch before.

The Landlord's Advocate stated that to his knowledge they had been before the Residential Tenancy Branch approximately 3-4 times in this tenancy. He also stated that approximately two years ago they got a writ of possession but they let the tenancy continue.

Analysis

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

I find that the Tenants were obligated to pay monthly rent of \$900.00 per month.

I accept the Landlords' Agent's testimony that the Tenants failed to pay rent the full amount of rent for March 2018 and September 2018 and failed to pay any rent for April 2018 or October 2018. Although the Tenant, D.B., stated that her daughter, L.B., paid rent on these dates, L.B. was not able to provide any testimony in this regard. Further, although the Tenants claimed they paid the full amount of rent each month and had receipts to prove this, the Tenants submitted only one rental receipt, representing their rent payment for May 2019; most importantly, they did not provide rent receipts for the dates in question, namely, March 2018, April 2018, September 2018 and October 2018.

On balance I find the Tenants failed to pay rent as required and I award the Landlords monetary compensation for the amounts claimed as follows:

March 2018	\$450.00
April 2018	\$900.00
September 2018	\$300.00
October 2018	\$900.00
TOTAL AWARDED	\$2,550.00

As the Landlords have been successful in their Application I also award them recovery of the filing fee for a total award of **\$2,650.00**.

Conclusion

The Landlords application for monetary compensation for unpaid rent in the amount of \$2,550.00 and recovery of the \$100.00 filing fee is granted.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act* I authorize the Landlords to retain the Tenants \$450.00 security deposit towards the amounts claimed and I award them a Monetary Order for the balance of **\$2,200.00**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division)

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: May 22, 2019

Residential Tenancy Branch