



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for an order of possession for the rental unit due to a One Month Notice to End Tenancy for Cause, a monetary order for unpaid rent, claiming against the tenant's security deposit and pet damage deposit, and for recovery of the filing fee paid for this application.

The listed landlord and the landlord's agent were present at the beginning of the hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The tenant called into the hearing six minutes after it had started. I affirmed the tenant and she was given full opportunity to provide her testimony.

The tenant said that she submitted evidence for the hearing; however that evidence was returned to her. I asked the tenant what name and address was used and she confirmed her evidence package was sent to the Residential Tenancy Branch ("RTB"), but she could not remember what address or when it was sent and returned.

I declined her request to adjourn the hearing in order to re-submit her evidence. This request was denied as there was no proof by the tenant that she used the correct address and due to the fact she apparently made no attempts to contact the RTB to inquire about proper submissions of evidence.

As another preliminary matter, the landlords filed an amendment to their original application seeking to increase their monetary claim for post-tenancy matters. I informed the landlords that their amended monetary claim was being refused, with leave to reapply.

This refusal was made pursuant to section 59(5)(c) of the Act because they did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act and Rule 2.5 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules").

Specifically, the landlords failed to provide a breakdown as they did in their original application, on a monetary order worksheet.

As a procedural matter, the landlords' evidence shows that the tenant vacated the rental unit on or around July 2, 2019. I have therefore excluded their request for an order of possession of the rental unit and the hearing proceeded on the merits of the landlords' application for their original monetary claim.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation and to recovery of their filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this six month, fixed term tenancy began January 3, 2019, monthly rent was \$1,600.00, due on the first day of the month, and the tenant paid a security deposit of \$800.00 and a pet damage deposit of \$400.00 at the beginning of the tenancy.

The landlords submitted a copy of the written tenancy agreement which showed that the tenancy continued on a month to month basis at the end of the fixed term.

The landlord submitted that they issued two Notices to end the tenancy, including the 10 Day Notice, which indicated the tenant owed, but failed to pay rent of \$1,600.00 for June 2019. The other Notice was a One Month Notice.

The landlord submitted that the tenant failed to pay any rent for the month of June 2019, and vacated early in July, without paying any more rent.

Tenant's response-

The tenant submitted that she has plenty of text messages from the landlord's agent to not pay rent and just vacate, which she did.

I note the tenant did not read from her text messages, as she was on her mobile phone for the hearing, according to the tenant.

Landlord's rebuttal-

The landlord denied telling the tenant not to pay rent and questioned why she would say that when she has a mortgage due.

Tenant's further response-

The tenant submitted that the text messages were from the landlord's agent, not the landlord.

Analysis

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. A legal right may include authorization from an Arbitrator giving you permission to keep all or part of the rent or costs incurred to make an "emergency repair", as defined by the Act.

I find that the landlords submitted sufficient evidence to show that the tenant owed, but did not pay rent for June 2019, under the terms of the written tenancy agreement. I

therefore find the landlords are entitled to a monetary award of \$1,600.00, for unpaid rent for June 2019.

I also grant the landlords \$100.00 for recovery of their filing fee.

At the landlords' request, I allow the landlords to retain the tenant's security deposit of \$800.00 and the pet damage deposit of \$400.00 in partial satisfaction of their monetary award of \$1,700.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$500.00, which is attached to the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords' application for a monetary order for unpaid rent and recovery of the filing fee is granted.

The amended portion of the landlords' application seeking additional monetary compensation has been dismissed, with leave to reapply.

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: August 8, 2019

Residential Tenancy Branch