



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

On July 12, 2019 the landlord made an application through the Direct Request process, that matter was adjourned to a participatory hearing, schedule before me on September 10, 2019. The interim decision should be read in conjunction with this decision.

The landlord’s agent appeared. As the tenants did not attend the hearing, service in accordance with the interim decision was considered.

The landlord’s agent testified that they complied with the interim decision and both tenants were served in person on July 17, 2019. I find the tenants were served in accordance with the interim decision and the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the landlord's agent testified that the tenants' vacated the rental unit on July 31, 2019, and an order of possession is not required.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on December 1, 2014. Current rent in the amount of \$2,274.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on July 31, 2019.

The landlord's agent testified that the tenants have been in rent arrears since 2017. The agent stated that they recently took over the file and they have determined that the tenants rent arrears total the amount of \$7,830.00.

The landlord's agent testified that the tenants were served with multiple notices to end tenancy for unpaid rent; however, they were promised by the tenants that they would catch up on the rent. The agent stated they did not want to evict the family; however, they had no choice as the rent was not paid.

Filed in evidence is a copy of a promissory note dated May 14, 2018 for unpaid rent, a copy of the 10 Day Notice for Unpaid Rent, and a copy of a detailed calculation of rent owed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) 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 this Act to deduct all or a portion of the rent.

...

I am satisfied based on the undisputed evidence of the landlord's agent and the documentary evidence that the tenants were in rent arrears throughout their tenancy. I find the tenants breached the Act when they failed to pay rent in accordance with their tenancy agreement. I find the landlord is entitled to recover unpaid rent up to and including July 2019, in the amount of **\$7,830.00**.

I find that the landlord has established a total monetary claim of **\$7,930.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$6,930.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: September 11, 2019

Residential Tenancy Branch

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant
