



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MNR OPR MNSD FF
	Tenant:	CNR LRE OLC RP FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on September 27, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession based on an undated 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- an order allowing the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 15, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling the 10 Day Notice;
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit or site;
- an order that the Landlord comply with the *Act*, regulation and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

During the hearing, the parties agreed the tenancy ended on September 30, 2019, at which time the Tenant vacated the rental unit. Therefore, I find the Tenant's Application is moot and that it is not necessary to address any of the issues raised in the Tenant's Application. The Tenant's Application is dismissed without leave to reapply. As the tenancy ended on September 30, 2019, I also find it is not necessary to consider the Landlord's request for an order of possession.

The Landlord testified the Landlord's Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt. In addition, the Tenant testified that the Tenant's Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy ended on September 30, 2019, at which time the Tenant vacated the rental unit. The Landlord claimed \$1,600.00 in unpaid rent due on September 1, 2019.

The Landlord testified the tenancy ended because the Tenant provided her with written notice to end the tenancy dated August 29, 2019. A copy of the notice was submitted into evidence and states: “[Tenant] will be moving out September,30,2019. This is my end of tenancy notice as the property has been sold.”

In reply, the Tenant did not dispute that rent was not paid on September 1, 2019. The Tenant testified she was given notice to end the tenancy verbally and in a text message exchange on August 28, 2019. In the text message exchange submitted into evidence, the parties discussed the end of the tenancy. The Landlord states: “Actually to make it easier for your schedule can you just send the documents you need to to say your leaving end of sept”. The Tenant testified that she provided the Landlord with the requested documents. However, the parties acknowledged the Landlord did not issue any notice to end tenancy in a form prescribed under the *Act*. The Tenant submitted that she was entitled to withhold rent due on September 1, 2019 based on the verbal discussion and the text message.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find that the tenancy ended on September 30, 2019. Although there appear to have been discussions about the possibility the Landlord would issue a notice to end tenancy under section 49 of the *Act*, the parties agreed that the Landlord did not do so in the prescribed form, as required under section 52 of the *Act*. However, I find the Tenant did provide the Landlord with a written notice to end the tenancy effective September 30, 2019. It appears the Tenant was under the mistaken belief that the Landlord had issued a valid notice to end tenancy for landlord’s use of property under section 49 of the *Act* and that the Tenant was therefore entitled to compensation under section 51(1.1) of the *Act*. However, I find the Landlord did not issue any notice to end tenancy that would either end the tenancy or give rise to a right to under the *Act* to withhold rent due on September 1, 2019.

Considering the above, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$1,600.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. In the circumstances, I also find it is appropriate to order that the Landlord retain the \$800.00 security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$900.00, which has been calculated as follows:

Landlord's Claim	Amount Awarded
Unpaid rent due September 1, 2019:	\$1,600.00
Filing fee:	\$100.00
LESS security deposit:	(\$800.00)
TOTAL:	\$900.00

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is granted a monetary order in the amount of \$900.00. The monetary 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(1) of the *Residential Tenancy Act*.

Dated: November 18, 2019

Residential Tenancy Branch