



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlords:	MNR OPR FF
	Tenants:	CNR OLC PSF RP

Introduction

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

The Landlords’ Application for Dispute Resolution was made on September 19, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 4, 2019 (the “10 Day Notice”);
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on September 13, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling the 10 Day Notice;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order requiring the Landlords to provide services or facilities required by the tenancy agreement or law; and
- an order requiring the Landlords to make repairs to the rental unit/property.

The Landlord D.B. attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. As a result, I find the Tenants’ Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

On behalf of the Landlords, D.B. testified the Landlords' Notice of Dispute Resolution Hearing package was served on the Tenants in person on September 19, 2019. In the absence of evidence to the contrary, I find the Tenants were served with and received the Landlords' Notice of Dispute Resolution Hearing package on September 19, 2019.

D.B. was 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.

Preliminary and Procedural Matters

During the hearing, D.B. testified that the Tenants vacated the rental unit in mid-September 2019 and that an order of possession is no longer required. Therefore, I have not considered the Landlords' request for an order of possession further in this Decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the fixed-term tenancy began on August 1, 2019 and was expected to continue to August 1, 2024. Rent in the amount of \$2,750.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,325.00, which the Landlords hold.

On behalf of the Landlords, D.B. testified the Tenants vacated the rental property in mid-September 2019. However, they did not pay rent when due on September 1 and October 1, 2019. The Landlords were able to re-rent the unit effective November 1, 2019. D.B. estimated the Tenants caused about \$30,000.00 in damage to the rental unit.

The Tenants did not attend the hearing to dispute the Landlords' evidence.

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 Landlords 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 the Tenants did not pay when due on September 1 and October 1, 2019, and that rent in the amount of \$5,500.00 is outstanding. I find there is insufficient evidence before me to conclude the Tenants had a right under the *Act* to withhold rent. I find the Landlords are entitled to a monetary award in the amount of \$5,500.00 for unpaid rent. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Landlords' Application. Further, in the circumstances, I find it is appropriate to order that the Landlords may retain the security deposit held in partial satisfaction of the Landlords' claim.

Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$4,275.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$5,500.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	\$1,325.00
TOTAL:	\$4,275.00

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlords are granted a monetary order in the amount of \$4,275.00. 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 25, 2019

Residential Tenancy Branch