



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 LL: MNRL-S, OPR

Introduction

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

The Tenant made an Application for Dispute Resolution on September 20, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 20, 2019 (the “10 Day Notice”);

The Landlords’ Application for Dispute Resolution was made on September 26, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- an order to retain the Tenant’s security deposit; and

The Tenant and the Landlords attended the hearing at the appointed date and time and provided affirmed testimony.

The parties testified and agreed that they each served they respective Applications and documentary evidence to the other party and each of them confirmed receipt. In the absence of evidence to the contrary, and pursuant to section 71 of the *Act*, I find the Application packages and documentary evidence were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the parties testified that the tenancy has ended. The Tenant stated that the tenancy ended on November 5, 2019, while the Landlords stated that they received vacant possession of the rental unit on November 19, 2019. As both parties confirmed that the tenancy has ended, I find that the Tenant's Application to cancel the 10 Day Notice and the Landlords' Application for an order of possession are now moot and therefore dismissed without leave to reapply.

The hearing continued based on the Landlords' Application for a monetary order relating to unpaid and rent and utilities.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the Tenant's security deposit, pursuant to Section 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed that they had a verbal tenancy agreement which began on September 1, 2019. The Landlords stated that the Tenant was required to pay rent in the amount of \$1,600.00 which is due to be paid on the first day of each month. The Landlords stated that the parties agreed that the Tenant would have a roommate move into the rental unit on October 1, 2019 at which point the monthly rent would increase to \$2,000.00 each month. The Landlords stated that the Tenant did not pay a security deposit and abandoned the rental unit on November 19, 2019.

The Tenant stated that the parties agreed that the rent would be \$1,600.00 each month, however, the Tenant denied the requirement to pay additional rent in the amount of \$2,000.00 once her roommate moved into the rental unit. The Tenant stated that she paid a security deposit in the amount of \$850.00 and stated that the Landlords changed the locks on the rental unit on November 5, 2019.

The Landlords testified that the Tenant failed to pay the security deposit at the start of the tenancy, and only paid the Landlord \$850.00 of the \$1,600.00 owed to the Landlords for September 2019 rent. The Landlords subsequently served a 10 Day Notice dated September 20, 2019 with an effective date of September 30, 2019, by serving it to the Tenant in person with Police presence. The parties provided a copy of the 10 Day Notice in support.

The Tenant testified that she received the 10 Day Notice on September 20, 2019. The Tenant stated that she paid the Landlords \$850.00 which was meant to be a security deposit. The Tenant stated that she paid the Landlords \$1,600.00 rent for the month of September 2019. The Tenant stated she paid the Landlords in cash and did not receive a receipt. The Tenant referred to a bank statement that would indicate the withdrawal of the rent from the Tenants bank account, however, she stated that she did not provide this bank statement in her documentary evidence.

The Landlords stated that the only amount they have received from the Tenant was \$850.00 which was paid on September 11, 2019. The Landlords stated that the Tenant has failed to pay rent for October and November 2019 as well. The Landlords stated that they were required to repair and clean the rental unit and have been unable to re-rent the rental unit for the month of November 2019. The Tenant confirmed that she has not paid the Landlord any rent for October and November 2019, due to ongoing conflict between her and the Landlords.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Landlords served the Tenant in person with the 10 Day Notice dated September 20, 2019 with an effective vacancy date of September 30, 2019. The Tenant confirmed receipt. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the *Act*.

I find that the 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,600.00 to the Landlords which was due on September 1, 2019. The Landlords stated that the Tenant paid \$850.00 to the Landlords on September 11, 2019. The Tenant stated that the \$850.00 was meant to represent the Tenant's security deposit, and that she paid a further \$1,600.00 to the Landlords for rent.

I find that the Tenant has provided insufficient evidence to demonstrate that she paid the Landlords \$1,600.00 for the month of September 2019. I find that it is more likely than not that the Tenant failed to pay the Landlords the remaining balance of rent in the amount of \$750.00 for the month of September 2019.

I accept that the parties agreed that the Tenant did not pay rent to the Landlords for the month of October and November 2019 and that the Landlords have been unable to re-rent the rental unit for the month of November 2019.

The Landlords stated that the parties had verbally agreed that the Tenant was required to pay rent in the amount of \$2,000.00 starting in October 2019, once the Tenant's roommate moved into the rental unit. The Tenant denied that she had agreed to this and that she was under the impression that the monthly rent would remain at \$1,600.00. I find that the Landlords have provided insufficient evidence to support the increase in rent. As such, I find that the Landlords were at least entitled to rent in the amount of \$1,600.00 for the month of October and November 2019.

The Landlords applied for monetary compensation in the amount of \$521.43 for unpaid utilities. In this case, I find that the Landlords have provided insufficient evidence to demonstrate that the Tenant was required to the utility bills. As such, I dismiss the Landlords' claim for unpaid utilities without leave to reapply.

In light of the above, I find the Landlords have established an entitlement to a monetary award for the unpaid portion of September rent in the amount of \$750.00 as well as \$1,600.00 for each month of October and November 2019.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$3,950.00, which has been calculated as follows:

Claim	Amount
Unpaid rent September 2019:	\$750.00
Unpaid rent October 2019:	\$1,600.00
Unpaid Rent November 2019:	\$1,600.00
TOTAL:	\$3,950.00

Conclusion

The Tenant has failed to pay rent when due to the Landlords. The Landlords are granted a monetary order in the amount of \$3,950.00. 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 28, 2019

Residential Tenancy Branch