



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

Preliminary matter

This application was originally made under the Direct Request process which is an Ex-Parte process based on paper submissions only. The Landlord was successful and received a decision, an Order of Possession and a monetary Order all dated October 24, 2019. Following the Direct Request decision and orders the Tenant filed a Review Consideration Application to review the decision and Orders of October 24, 2019. The Tenant was successful and the review hearing was granted and is scheduled for today's date at 11:00 a.m.

Further on the Tenant filed an application on October 18, 2019 to cancel two Notices to End Tenancy. That application was heard on November 15, 2019. The Tenant was unsuccessful in that matter and an Order of Possession dated November 15, 2019 was granted to the Landlord with an effective vacancy date of 2 days after service of the Order of Possession. Consequently, as Landlord has already received an Order of Possession the Landlord's request for an Order of Possession in this application is dismissed. This application will proceed with the Landlord's monetary claim.

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on October 18, 2019. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on July 1, 2018 as a fixed term tenancy with an expiry date of June 30, 2019 and then continued on a month to month basis. Rent is \$1600.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$800.00 on July 1, 2018. The Landlord said the Tenants abandoned the rental unit some time in late November 2019.

The Landlord said that the Tenants did not pay \$1,600.00 of rent for October 2019 when it was due and as a result, on October 4, 2019 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 4, 2019 on the door of the Tenants' rental unit. The Landlord continued to say the Tenants did not pay the November 2019 rent of \$1,600.00 and she is unable to rent the unit because the Tenants left the unit in very poor condition. The Landlord requested lost rental income for December 2019 in the amount of \$1,600.00. The Landlord said her claim is for \$3,200.00 in unpaid rent, \$1,600.00 in lost rental income, to retain the Tenants' security deposit of \$800.00 and to recover the filing fee of \$100.00.

Analysis

Section 26 says 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.

The Tenants do not have the right under the Act to withhold part or all of the rent for October 2019 and November, 2019 in the amount of \$3,200.00. Further I accept the Landlord's undisputed affirmed testimony that the unit was left in poor condition and the Landlord is unable to rent the unit for the month of December 2019. I award the Landlord lost rental income of \$1,600.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears: (\$1,600.00 X 2)	\$3,200.00
	Lost rental income	\$1,600.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$4,900.00
Less:	Security Deposit	\$ 800.00
	Subtotal:	\$ 800.00
	Balance Owing	\$ 4,100.00

Conclusion

A Monetary Order in the amount of \$4,100.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 16, 2019

Residential Tenancy Branch