



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on November 14, 2019 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

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

The Landlord testified the Application and documentary evidence packages were served to the Tenant in person. The Landlord could not recall the date of service. The Tenant confirmed that she received the Application on November 23, 2019, however, she stated that she did not receive a copy of the Landlord's documentary evidence. I find the Application was sufficiently served to the Tenant pursuant to Section 89 of the Act.

The Tenant indicated that she did not receive the Landlord's evidence. According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not receive the evidence and the Landlord provided insufficient evidence to prove service; therefore, the only evidence I will consider from the Landlord is their

oral testimony during the hearing. The Tenant confirmed that she did not submit any documentary evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and to make submissions to me. I have reviewed all oral 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.

Preliminary Matters

At the start of the hearing, the parties testified and agreed that the tenancy had ended on December 30, 2019. As such, the Landlord is no longer seeking an order of possession based on unpaid rent. The hearing continued based on the Landlord's Application for a monetary order for unpaid rent and the return of the filing fee.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 10, 2019. Rent in the amount of \$1,950.00 per month was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$975.00, as well as a pet damage deposit in the amount of \$400.00. The parties agreed that the Landlord has since returned \$1,000.00 to the Tenant following the end of the tenancy. The Landlord continues to hold \$375.00 of the Tenant's deposits.

The Landlord testified the Tenant did not pay rent when due in July, August and September 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 13, 2019 (the "10 Day Notice") with an effective vacancy date of September 23, 2019. At that time, rent in the amount of \$5,850.00 was outstanding. The Landlord testified he served the 10 Day Notice to the Tenant by posting it to the Tenant's door on September 13, 2019.

In addition, the Landlord testified that the Tenant also failed to pay rent when due for October, November, and December 2019. The Landlord stated that currently, rent in the amount of \$11,700.00 is outstanding.

The Tenant confirmed that she has failed to pay rent to the Landlord when due for July, August, September, October, November, and December 2019. The Tenant confirmed receiving the 10 Day Notice posted to her door on September 13, 2019. The Tenant stated that she felt entitled to withholding the rent due to some issues that were occurring throughout the tenancy.

The Tenant stated that the furnace was being powered by an extension cord which is hazardous. The Tenant stated that she did not have any heat in her rental unit from May until October 2019. The Tenant stated that there were electrical issues in the rental unit and that she felt as though it was an unsafe living environment. As such, the Tenant withheld her rent for six months in the amount of \$11,700.00.

If successful, the Landlord is seeking the return of the filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony 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 Landlord served the Tenant with the 10 Day Notice dated September 13, 2019 with an effective vacancy date of September 23, 2019, by posting it to the Tenant's door on September 13, 2019. The Tenant confirmed receipt.

I accept that the parties agreed that the Tenant has not paid rent to the Landlord when due in July, August, September, October, November, and December 2019 in the amount of \$11,700.00. I find that the Tenant was not permitted to withhold rent from the Landlord. If the Tenant felt as though there were issues during the tenancy, she was at liberty to make an application for dispute resolution, seeking a remedy under the Act.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$11,700.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$11,425.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$11,700.00
Filing fee:	\$100.00
<i>LESS</i> security deposit held:	-(<i>\$375.00</i>)
TOTAL:	\$11,425.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$11,425.00. 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: January 16, 2020

Residential Tenancy Branch