



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a monetary order for unpaid rent, with a claim against the tenant's security deposit; and
- recovery of the filing fee paid for this application.

The landlord and her daughter attended the teleconference hearing. The tenant did not attend the hearing. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered. The landlord testified that the tenant was served by registered mail with the Notice of Hearing documents. The landlord submitted the tracking number for the registered mail and that tracking number is reflected on the style of cause page in this Decision.

Based on the landlord's undisputed testimony and evidence, I accept that the tenant was sufficiently served notice of this hearing as required by the Act.

Preliminary Issues-

During the hearing, when confirming the issues, I informed the landlord that it appeared from my viewing of submissions that she had applied for an order of possession of the

rental unit and recovery of the filing fee, only. The landlord said that was incorrect as her application to which she referred to during the hearing shows that she also had a monetary claim of \$275.00, which was for unpaid rent for December 15-31, 2019.

After the hearing, I confirmed that the landlord had listed in her application a monetary claim of \$275.00, for the unpaid rent, and it is considered here.

Additionally, the landlord said that the tenant has vacated the rental unit since the landlord made her application. As such, the landlord confirmed that she no longer required an order of possession of the rental unit.

The hearing proceeded on the landlord's monetary claim for unpaid rent and recovery of her filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order comprised of unpaid rent owed under the tenancy agreement and recovery of the filing fee?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of any monetary award?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on October 1, 2019, monthly rent payable by the tenant was \$550.00, with \$275.00 due on the first day of the month and \$275.00 due on the 15th day of the month, and a security deposit of \$275.00 paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on December 16, 2019, the tenant was served with the Notice, by personal service, listing unpaid rent of \$275.00 as of December 15, 2019. The effective vacancy date listed on the Notice was December 26, 2019.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant failed to pay any further rent and vacated the rental unit on January 13, 2020.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I have no evidence before me that the tenant applied to dispute the Notice.

As such, I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed in the amount of \$275.00, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

As such, I grant the landlord a monetary award in the amount of \$275.00, pursuant to section 67 of the Act.

I also grant the landlord recovery of her filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$375.00, comprised of outstanding rent of \$275.00 through December 2019, and the \$100.00 filing fee paid by the landlord for this application.

A question arose in the hearing as to the disposition of the tenant's security deposit, as the landlord believed her application asking for the security deposit, in addition to a separate monetary claim for unpaid rent, entitled her to both in the full amount. I find it necessary to further explain.

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is **required** to either

return a tenant's security deposit or make an application for dispute resolution to retain the security deposit **within 15 days** of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord may not make a claim and **must** pay the tenant double the security deposit and pet damage, pursuant to section 38(6) of the Act. (my emphasis)

Under section 72(2) of the Act, however, if a party to a dispute resolution proceeding is ordered to pay any amount to the other, such as here, the payment from a tenant to the landlord, that amount may be deducted from any security deposit due to the tenant.

As the landlord has made such a request, I direct the landlord to retain the tenant's security deposit of \$275.00 in partial satisfaction of her monetary award of \$375.00, and grant the landlord a monetary order for the balance due, in the amount of \$100.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The landlord is at liberty to make another application for dispute resolution to make a claim for any damage to the rental unit caused by the tenant.

Conclusion

The landlord's application for a monetary order for unpaid rent and recovery of her filing fee has been granted. The landlord has been granted authority to retain the tenant's security deposit in partial satisfaction of her total monetary award of \$375.00

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: March 2, 2020

Residential Tenancy Branch