



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARIBOO FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPR-DR, OPRM-DR

Introduction

In this dispute, the landlord sought an order of possession, a monetary order for unpaid rent, and recovery of the application filing fee, pursuant to sections 55, 67, and 72, respectively, of the *Residential Tenancy Act* (the “Act”). At the outset of the hearing, the landlord clarified that the tenant had since vacated the rental unit in mid-March 2020, and as such they did not require an order of possession.

The landlord applied for dispute resolution on February 14, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 28, 2020. I note that the application was initially a direct request application, which was adjourned to a participatory hearing. The landlord’s agent (hereafter the “landlord”) attended the hearing, was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

2The landlord testified that they served the Notice of Dispute Resolution Proceeding package on the tenant by way of registered mail on March 5, 2020. She also tried calling the Band office where the tenant could be located, but to no avail. Failure to pick up the registered mail is not a defense, and I find, based on the undisputed testimony of the landlord that the tenant was served in compliance with section 89 of the Act.

Issues

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified and confirmed that the tenancy commenced on April 7, 2010, and that the current monthly rent was \$273.00. Rent was due on the first of the month. The tenant paid a security deposit of \$352.04, which the landlord currently retains. A copy of the written tenancy agreement was submitted into evidence.

On January 16, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), which indicated that monthly rent of \$222.00 was due on January 1, 2020. A copy of the Notice was submitted into evidence. The landlord testified that the tenant also owes rent for February 2020 in the amount of \$273.00. While the tenant moved out in mid-March 2020, the landlord is not seeking any arrears for part of that month.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on January 1, 2020, and she did not pay rent for February 2020 as well. Further, there is no evidence before me that the tenant had a right under the Act to not pay the rent.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with the Act by not paying the rent, and that they should be compensated for this non-compliance.

Section 67 of the Act states that

Without limiting the general authority in section 62 (3) [. . .], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Taking into consideration all the undisputed testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation for unpaid rent in the amount of \$495.00. Further, as the landlord was successful, I award \$100.00 for the filing fee, for a total monetary award of \$595.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order the landlord to retain the tenant’s security deposit of \$352.04 in partial satisfaction of the above-noted award. The balance of \$242.96 will be granted in the form of a monetary order, which is issued in conjunction with this decision.

Conclusion

I grant the landlord a monetary order in the amount of \$242.96, which must be served on the tenant. The 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 Act.

Dated: April 28, 2020

Residential Tenancy Branch