



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

In this dispute, the landlords sought compensation against their former tenants for unpaid rent, pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). They also sought recovery of the filing fee pursuant to section 72 of the Act.

The landlords applied for dispute resolution on November 19, 2019 and a dispute resolution hearing was held, by way of telephone conference, on April 9, 2020. The landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenants did not attend.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the landlords’ testimony may be reproduced below.

Service of the Notice of Dispute Resolution Proceeding

Regarding service of the Notice of Dispute Resolution Proceeding package (the “Notice”), one of the landlords testified that they served the tenant J.D. with the Notice by way of registered mail. A copy of the Canada Post registered mail receipt was entered into evidence. He further testified that he served the tenant G.G. with a copy of the Notice, in-person. According to the landlords, the tenants were difficult to locate, and it was not until the tenant G.G. was being evicted by a bailiff that the landlord was able to locate and then serve him with the Notice on February 6, 2020.

While the service of the Notice is outside the normal timeframe permitted by the Act and the *Rules of Procedure*, I am satisfied that the tenants were served with the Notice, and that they had ample opportunity – two months in fact – to prepare for this hearing. Thus, I find that the tenants were served with the Notice in compliance with the Act.

Issues

1. Are the landlords entitled to compensation for unpaid rent?
2. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

The landlords confirmed and testified that the tenancy began on October 1, 2018 and ended on November 4, 2019. A written tenancy agreement, a copy of which was submitted into evidence, indicated that monthly rent was \$1,850.00 and that it was due on the first of the month. The tenants paid a security deposit of \$925.00; the landlords confirmed that they retained this amount in trust.

Regarding the compensation sought, the landlords testified that the tenants did not pay \$350.00 of the rent for July 2019, \$1,850.00 of the rent for September 2019, and \$1,850.00 of the rent for October 2019. The total amount of rent arrears is \$4,050.00. In addition, the landlords seek compensation for the \$100.00 filing fee.

The landlords submitted copies of bank statements and transactions, a 10 Day Notice to End Tenancy for Unpaid Rent, and a Monetary Order Worksheet.

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 a tenant has a right under the Act to withhold rent.

The landlords testified, and provided documentary evidence to support their submission, that the tenants did not pay rent for September and October 2019 and did not pay all of the rent for July 2019. The 10 Day Notice to End Tenancy for Unpaid Rent, which was issued on September 26, 2019 for unpaid rent due on September 1, 2019 (plus the overdue rent from July 2019) substantiates and lends evidentiary weight to the landlords' testimony. Finally, there is no evidence before me that might lead me to deduce that the tenants had a right under the Act to withhold the rent for any reason.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for \$4,050.00.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party. Pursuant to section 67 of the Act I hereby grant the landlords a monetary award of \$4,050.00.

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 that the landlords may retain the tenants’ security deposit of \$925.00 in partial satisfaction of the above-noted award.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful, I grant their claim for reimbursement of the filing fee of \$100.00.

I calculate a total monetary award of \$4,150.00, with a monetary order of \$3,225.00, as follows:

CLAIM	AMOUNT
Unpaid rent	\$4,050.00
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$925.00)
Total:	\$3,225.00

Conclusion

I grant the landlords a monetary order in the amount of \$3,225.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding and 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 9, 2020

Residential Tenancy Branch