



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL, MNRL, MNDCL

Introduction

In this dispute, the landlords seek various relief under the *Residential Tenancy Act* (the “Act”), including compensation for unpaid rent, unpaid utilities, and recovery of the filing fee. I note that their application indicates that an order of possession is sought, however, the landlords obtained an order of possession in a previous arbitration hearing on April 6, 2020; as such, the order of possession will not be addressed herein.

The landlords applied for dispute resolution on March 17, 2020 and a dispute resolution hearing was held, by way of telephone conference, at 9:30 AM on May 14, 2020. The landlord (J.A.) attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; the tenants did not attend.

I note that internal Residential Tenancy Branch audit notes refer to the tenant or tenants having called the Branch’s information line at 9:40 AM and indicating that they had misplaced the hearing information.

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 parties’ testimony may necessarily be reproduced.

Issues

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

Background and Evidence

The landlord testified that the tenancy began on September 1, 2019 and was a fixed term tenancy ending on August 31, 2020. Monthly rent, which was due on the first of the month, is \$2,200.00. The tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$250.00. A copy of the written tenancy agreement was submitted into evidence, along with an addendum to the tenancy agreement. The addendum indicates that the tenants are responsible for 3/5 of the cost of the electricity.

The landlords testified that the tenants did not, and have not, paid rent for March, April, and May 2020, and that arrears total \$6,600.00. They have also not paid their electrical bill totalling \$426.26. A copy of the electricity bill was submitted into evidence. Also submitted was an amended Monetary Order Worksheet. The landlords are also seeking recovery of the filing fee of \$100.00. The hearing ended at 9:37 AM.

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. Rent includes any amount that is payable under the tenancy agreement such as a portion of the utilities, including electricity.

The landlord testified and provided documentary evidence (including a 10 Day Notice to End Tenancy for Unpaid Rent) to support their submission, that the tenants did not pay rent when it was due. And, there is no evidence before me that the tenants had a right under the Act to not pay the rent.

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 unpaid rent and utilities in the amount of \$7,026.26.

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.

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.” Given that the tenancy ended on March 12, 2020, as indicated on the 10 Day Notice to End Tenancy for Unpaid Rent, I am permitted to order that the landlords may retain the tenants’ security and pet damage deposits of \$1,350.00 in partial satisfaction of the above-noted award. The tenants therefore owe the landlords a total of \$5,776.26, which is reflected on a monetary order issued in conjunction with this decision.

In summary, the total monetary award and order are calculated as follows:

CLAIM	AMOUNT
Unpaid rent (March, April, May 2020)	\$6,600.00
Unpaid utilities	426.26
Filing fee	\$100.00
<i>LESS</i> security and pet damage deposits	(\$1,350.00)
Total:	\$5,776.26

Conclusion

I grant the landlords a monetary order in the amount of \$5,776.26, 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 14, 2020

Residential Tenancy Branch