



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1067063 BC Ltd.,
and [tenant name suppressed to protect privacy]

DECISION

Code MNR,, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant confirmed they received the landlord’s evidence. The landlord stated that they did not receive any evidence relating to this file. The tenant stated it was sent by email. The landlords stated they are able to proceed without the tenant’s evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary issue

At the outset of the hearing the tenant stated that they vacated the premise. The landlord stated that the tenant left on June 5, 2020; however, there is items left behind. I find I need not consider if the landlord is entitled to an order of possession as the landlord has possession. I find the landlord is entitled to immediate access to the rental unit.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy agreement provided as evidence shows the parties entered into a fixed term tenancy which began on June 1, 2019 and was to expire on February 1, 2020. Rent in the amount of \$3,900.00 was payable on the first of each month. The tenant paid a security deposit of \$1,800.00. The tenancy ended on or about June 5, 2020.

The landlords testified that the tenant rented the entire premise, which they used the upper portion of the house to rent rooms. The landlord stated that the tenant did not pay rent for May 2020.

The tenant testified that the landlord was going to take over the upper portion of the premises and they were remaining in the lower portion of the house. The tenant their tenancy indicates that rent for the upstairs was \$2,800.00 and the lower portion was \$1,100.00 the tenant stated they did no pay any portion of the rent to the landlord.

The landlord argued that they were going to take over the upper portion of the house; however, they were told by the tenant that he had new occupants moving into the premise commencing May 1, 2020. The landlord stated that these occupants were the tenant's responsibility and they never agreed on the terms of a new lease for the tenant to rent only the bottom portion, although there was a discussion.

The landlord argued that the tenant gave notice to end the tenancy on April 30, 2020, and had the occupants move out on June 1, and the tenant left on June 5, 2020.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the /landlords have the burden of proof to prove their claim. .

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

...

I do not accept the tenant's evidence that there was a set rent for the upper portion of the house of \$2,800.00 and a set rent of \$1,100.00 for the lower portion. That is contrary to the written tenancy agreement filed in evidence which rent is set at \$3,900.00 for the entire premise.

While I accept there was a discussion starting on April 2, 2020, with the landlord taking over the possession of the upper portion of the house and the tenant remaining in the lower portion; however, no new tenancy agreement was entered into.

Further, the evidence support that the tenant had new occupants moving into the premise commencing May 1, 2020, which were family members. I find it was the tenant's responsibility to collect the rent from their occupants and pay the full amount of rent to the landlord as stated in their tenancy agreement, until they either entered into a new tenancy agreement with the landlord, which never happened. Rather, the tenant gave notice to end the tenancy on May 30, 2020, with an effective date of June 1, 2020, which at that time the tenant had their occupants move-out on June 1, 2020, and the tenant remained in the premise until June 5, 2020. The tenant paid no rent to the landlord.

I find the tenant breached the Act, and their tenancy agreement when they failed to pay rent for May 2020, and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent for May 2020, in the amount of **\$3,900.00**.

I find that the landlords have/ established a total monetary claim of **\$4,000.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,800.00 in partial** satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$2,200.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: June 16, 2020

Residential Tenancy Branch