



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 landlord seeks unpaid rent pursuant to sections 26 and 67 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee.

The landlord applied for dispute resolution on June 5, 2020 and a dispute resolution hearing was held on June 30, 2020. The landlord attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend, however.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package by way of e-mail on June 5, 2020, and additional material on June 10, 2020 by email. Service by e-mail was permitted pursuant to the Director’s order dated March 31, 2020. The landlord further testified that while the tenant did not directly acknowledge or respond to the email itself, she did have a text conversation with the landlord shortly after, during which she referred to this hearing in one of her texts.

Based on this evidence I am prepared to find that the landlord served the tenant with the Notice of Dispute Resolution Proceeding in compliance with the Act and the Director’s order.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

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

Background and Evidence

The tenancy began on September 15, 2019 and it was a fixed term tenancy ending March 31, 2020. Monthly rent is \$2,550.00, and which was due on the first of the month. The tenant paid a security deposit of \$1,275.00, which the landlord holds in trust. A copy of the written tenancy agreement was submitted into evidence. As of today, the tenant currently resides in the rental unit, a furnished house.

It should be noted that the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") in mid-March 2020, from which the landlord obtained an order of possession in another hearing. The 10 Day Notice, which indicated an end of tenancy of March 31, 2020, was upheld. The order of possession was issued on April 14, 2020. Thus, the tenancy ended on March 31, 2020.

Regarding the landlord's claim, he seeks unpaid rent in the amount of \$5,650.00, representing unpaid rent portions from April, May and June 2020. Finally, the landlord seeks the \$100.00 application filing fee, for a total of \$5,750.00.

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. The tenancy agreement clearly states that the tenant is to pay \$2,550.00 rent on the first of the month.

The landlord testified, and provided documentary evidence to support his submission, that the tenant has not paid all of the rent owed, and currently is in arrears to the amount of \$5,650.00. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent.

Taking into consideration all the oral 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 his claim for \$5,650.00. Pursuant to section 67 of the Act I thus award him this amount.

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 landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00 for a total monetary award of \$5,750.00.

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 the tenancy ended on March 31, 2020, I order that, and permit, the landlord to retain the tenant’s security deposit of \$1,275.00 in partial satisfaction of the above-noted award. The balance of the award is therefore \$4,475.00.

A monetary order in the amount of \$4,475.00 is issued in conjunction with this Decision.

Conclusion

I grant the landlord a monetary order in the amount of \$4,475.00, which may be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 30, 2020

Residential Tenancy Branch