



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit;
- authority to keep the tenant's security deposit to use against a monetary award;
- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord's application contained a request for an order of possession of the rental unit, based upon an alleged written notice by the tenant ending the tenancy. At the time of the hearing, the tenancy had already ended.

I therefore amended the landlord's request for the order of possession excluding that request, as it was no longer necessary to consider that issue.

Additionally, the landlord said he did not send his evidence to the tenant. The tenant confirmed not providing evidence.

As the landlord failed to send his documentary evidence to the tenant, I have excluded it from consideration. The landlord, however, provided his affirmed testimony in support of his application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The evidence shows that the parties signed two separate tenancy agreements, with the first one being for a tenancy start date of November 1, 2017, and the second being for a tenancy start date of November 1, 2019. The latest tenancy agreement shows that the tenant was required to vacate the rental unit on May 31, 2020.

The undisputed evidence was that monthly rent was \$1,144, the tenant was required to pay 45% of the gas and hydro bills, and the tenant paid a security deposit of \$550, which the landlord has retained, having made this claim against it. The tenancy ended on or about June 6, 2020.

The landlord's monetary claim was originally \$2,117.61; however, the reduced claim is as follows:

Unpaid rent –

The landlord submitted that the tenant paid \$500 for rent in April 2020, and nothing in May or June 2020.

The landlord confirmed that he received a total of \$900 in a government issued rent supplement on behalf of the tenant.

The landlord submitted that he is also claiming for \$190.67 for unpaid rent in June, which is the daily rate of \$38.13 for five days, as the tenant vacated the rental unit on June 6.

The landlord's revised monetary claim for unpaid rent is therefore \$1,078.68, which is the monthly rent of \$1,144 for April, \$1,144 for May, and \$190.67 for five days in June, less \$500 paid by the tenant in April and \$900 received in government-issued rent supplement payments.

Unpaid utilities -

The landlord submitted that as per the written tenancy agreement, the tenant was required to pay 45% of the hydro and gas, but failed to pay those costs.

The landlord's claim is \$351.45 for the period of January 20 through March 19, \$318.65 for the period of March 20 through May 19, and \$68.85 for the period of May 20 through June 5, 2020, or a total of \$738.95.

The landlord filed into evidence a copy of the latest written tenancy agreement.

Tenant's response-

The tenant said he stopped paying the monthly rent because his microwave and refrigerator stopped working and the landlord refused to replace them, as he was selling the property. The tenant said that he kept losing food as a result, could not cook his food, and he was not able to properly stock his home for the pandemic.

The tenant said he was pressured to sign the latest tenancy agreement and that he should not be responsible for utilities, due to the loss of his appliances.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and

order that party to pay compensation to the other party. The claiming party, the landlord here, has the burden of proof to substantiate their claim on a balance of probabilities.

Unpaid rent –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for a deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

As there was no evidence that the tenant had a legal right to withhold rent, I find he was responsible to pay under the terms of the written tenancy agreement.

On the basis of the undisputed evidence, I accept that the tenant owed the monthly rent of \$1,144 under the terms of the written tenancy agreement for the months of April and May 2020, and failed to pay the full amount. The tenant failed to dispute the landlord's evidence that he paid \$500 for April and that the landlord received an additional \$900 in rent supplement payments.

I also find on a balance of probabilities that the tenant failed to vacate the rental unit on May 31, 2020, as he agreed to do, and overheld in the rental unit for five extra days.

I find the landlord's claim of \$190.67, which is the daily rate of \$38.13 for five days to be reasonable.

Due to the above, I find the landlord has established a total monetary claim for unpaid rent in the amount of \$1,078.67, comprised of the unpaid monthly rent of \$1,144 for April, \$1,144 for May, and \$190.67 for the first five days in June, less the amounts of \$500 paid by the tenant and \$900 rent supplement payments paid to the landlord.

Unpaid utilities-

Under the written tenancy agreement, the tenant was obligated to pay for 45% of the hydro and gas bills. I find the landlord submitted sufficient and undisputed evidence to show that the tenant, owed, but failed to reimburse the landlord these expenses.

Although the tenant claimed he did not owe the utilities, it is on the tenant to address issues with alleged, non-working appliances. He is not permitted to withhold payments for such issues, absent the landlord's consent or authority from the Residential Tenancy Branch (RTB) through dispute resolution.

As to the amount, I find the landlord is entitled to a monetary award of \$351.45 for the period of January 20 through March 19, \$318.65 for the period of March 20 through May 19, and \$68.85 for the period of May 20 through June 5, 2020, or a total of \$738.95.

I grant the landlord recovery of his filing fee of \$100.

Due to the above, I find the landlord is entitled to a monetary award of \$1,917.62, comprised of unpaid rent of \$1,078.67, unpaid hydro and unpaid gas utilities for \$738.95, and the filing fee paid for this application in the amount of \$100.

At the landlord's request, I direct him to retain the tenant's security deposit of \$550 in partial satisfaction of his monetary award of \$1,917.62. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,367.62, which is included with his decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order must be served to the tenant to be enforceable, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, he has been authorized to retain the tenant's security deposit and he has been awarded a monetary order for the balance due, in the amount of \$1,367.62.

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: July 9, 2020

Residential Tenancy Branch