



Dispute Resolution Services

Page: 1

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”) and seeks to retain the security deposit in partial satisfaction of the unpaid rent claim pursuant to section 38(4) of the Act. Recovery of the filing fee is also sought under section 72 of the Act.

The landlord filed an application for dispute resolution on May 26, 2020 and a dispute resolution hearing was held on August 20, 2020. Two agents for the landlord attended the hearing and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenants did not attend.

The agents testified that the Notice of Dispute Resolution Proceeding package was served on the tenants by way of Canada Post registered mail. Copies of the tracking number and tracking documentation were submitted into evidence, and which indicated that the tenants were served on June 1, 2020.

Based on this undisputed evidence I find that the tenants were served in compliance with section 89 of the Act.

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

Background and Evidence

The tenancy began on May 15, 2019 and ended on May 15, 2020. Monthly rent was \$4,500.00 and which was due on the first of the month. The tenants paid a security deposit of \$2,250.00, which the landlord holds in trust pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence.

The landlord's agents gave evidence that the tenants did not pay the rent for April 2020 and for May 2020, for a total of \$9,000.00 in arrears. A copy of the landlord's rent ledger documentation was submitted into evidence. Also submitted in evidence was a copy of a Monetary Order Worksheet.

Some minor, additional background was provided by the landlord's agent (G.P.). However, this background will not factor into my decision and as such will not be reproduced herein.

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 withhold the rent.

The agents testified, and provided documentary evidence to support their submission, that the tenants did not pay rent for April and May 2020. Further, there is no evidence before me that the tenants had any right under the Act to not pay 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 their claim for unpaid rent of \$9,000.00.

Regarding the claim for the filing fee, 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 their claim for reimbursement of the filing fee of \$100.00. A total monetary award of \$9,100.00 is therefore granted.

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 a few months ago, I order that the landlord retain the tenants’ \$2,250.00 security deposit in partial satisfaction of the award.

The balance – \$6,850.00 – shall be in the form of a monetary order that is issued in conjunction with this decision.

Conclusion

The landlord’s application is hereby granted.

I grant the landlord a monetary order in the amount of \$6,850.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court). The tenants will be liable for additional costs related to collection and enforcement of the monetary order.

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: August 20, 2020

Residential Tenancy Branch