Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0840403 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on May 15, 2020. The Landlord applied for a monetary order for unpaid rent, for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this Tenant moved into the rental unit in September 2019 as a sub tenant under another person's tenancy. The parties also agreed that this other person ended their tenancy and moved out of the rental unit on October 31, 2019, but that this Tenant stayed on, renting a room and use of common areas in the rental unit under a verbal month to month tenancy with the Landlord. The Landlord and Tenant testified that rent in the amount of $750.00 was to be paid by the first day of each month and that a $375.00 security deposit and a $375.00 pet damage deposit had been paid for this tenancy. When asked, the Landlord testified that no written tenancy agreement had been signed for this tenancy, and that other several renters live in this rental unit, each renting their own room with shared use of common areas.

Both parties agreed that the Tenant ended their tenancy by vacating the rental unit on April 15, 2020.

The Landlords testified that the Tenant had not paid the rent for April 2020 in the amount of $750.00. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they have not paid the rent for April 2020, and that they owe the $750.00 in rent requested by the Landlord. The Tenant testified that they are experiencing financial difficulties due to the COVID-19 pandemic.

The Landlord testified that the Tenant had left a lot of junk behind on the rental property when they moved out, and it had cost them $628.95 to have the junk removed and disposed of. The Landlord submitted one picture and invoice into documentary evidence. When asked, the Landlord testified that no move-in/move-out inspection had been conducted for this tenancy.

The Tenant testified that they took all of their possession with them when they left, and that they cleaned and disposed of all their garbage at the end of the tenancy. The Tenant also testified that there were several other renters living on the rental property and that the junk the Landlord is claiming belonged to someone else.

The Landlord testified that the other renters had told them the junk had belonged to this Tenant.

During the hearing, the Landlord reduced their claimed amount to $314.47 for the junk removal, agreeing that at least half of the junk removed at the end of this tenancy had been another renters property.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

> ***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.*
>
> *(2) A landlord must provide a tenant with a receipt for rent paid in cash.*
>
> *(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*
>
> > *(a)seize any personal property of the tenant, or*
> >
> > *(b)prevent or interfere with the tenant's access to the tenant's personal property.*
>
> *(4) Subsection (3) (a) does not apply if*
>
> > *(a)the landlord has a court order authorizing the action, or*
> >
> > *(b)the tenant has abandoned the rental unit and the landlord complies with the regulations.*

I accept the agreed-upon testimony of these parties that the rent has not been paid for April 2020 for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of $750.00 for the April 2020 rent. I grant permission to the Landlord to retain the $375.00 security deposit and the $375.00 pet damage deposit they are holding for this tenancy, in full satisfaction of this monetary award.

As for the Landlord’s claim for $628.95 in the recovery of their costs for junk removal, I find that the parties, in this case, offered conflicting verbal testimony regarding who owned the junk that the Landlord had removed at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide

sufficient evidence over and above their testimony to establish their claim; in this case, that is the Landlord.

I have reviewed the Landlord's documentary evidence submitted to support this portion of the Landlord's claim, and I find that there is insufficient evidence before me to show who owned the junk removed from the rental property at the end of this tenancy. In the absence of sufficient evidence to prove that the junk removed by the Landlord had been this Tenant's property, I find that I must dismiss the Landlord's claim for the recovery of their costs for junk removal.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. I decline to award the recovery of the $100.00 filing fee paid for this hearing.

Conclusion

I grant permission to the Landlord to retain the security deposit and pet damage deposit that they are holding for this tenancy, in full satisfaction of the amounts awarded above.

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: September 28, 2020

Residential Tenancy Branch