



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On May 20, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for eight minutes and the Tenant did not call into the hearing during this time.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution proceeding using registered mail sent on May 21, 2020. The Landlord provided the registered mail tracking information as proof of service. The Landlord testified that the Residential Tenancy Branch re-scheduled the hearing and served both her and the Tenant with a new Notice of Dispute Resolution Proceeding containing the date and time of this 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 to recover unpaid rent?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on April 1, 2014, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,306.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$575.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant continues to live in the rental unit and has failed to pay all the rent owing under the tenancy agreement for the month of April 2020.

The Landlord testified that she received a payment of \$306.00 on April 28, 2020 and another payment of \$200.00 on May 27, 2020.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$800.00.

The Landlord testified that they have served a Repayment Plan to the Tenant in order to recover the unpaid \$800.00 owing for April 2020 rent. The Landlord provided a copy of the Repayment Plan.

Security Deposit

The Landlord is seeking to keep the security deposit of \$575.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

Since the tenancy is ongoing, the Landlord is not entitled to receive a monetary order for unpaid "affected rent". The Landlord is required under the Residential Tenancy Regulation to serve the Tenant with a Repayment Plan that complies with the Regulation.

If a Tenant fails to make a payment due under the Repayment Plan, the Landlord may end the tenancy by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and may apply for a monetary order for the unpaid rent.

I find that the April 2020 rent is affected rent. I have reviewed the Landlord's Repayment plan and I find that it meets with the requirements of the Regulation.

Since the Tenant has not failed to make a payment under the Repayment Plan, the Landlord's claim for a monetary order for April 2020 rent is premature and is dismissed with leave to reapply.

Similarly, since the tenancy is ongoing, the Landlords claim to keep the security deposit is premature. Section 38 (4) of the Act provides that a Landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the Tenant agrees in writing the Landlord may retain the amount to pay a liability or obligation of the tenant; or after the end of the tenancy, the director orders that the landlord may retain the amount.

The Landlord's claim to keep the security deposit is dismissed with leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful with the application the repayment of the filing fee is not granted.

Conclusion

The Landlords application for a monetary order and to keep the security deposit is premature and is dismissed with leave to reapply.

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 24, 2020

Residential Tenancy Branch