



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPN, MNRL-S, FFL

Introduction

In this dispute, the landlords seek compensation for unpaid rent under section 67 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the filing fee under section 72 of the Act.

At the outset of the hearing, the landlords confirmed that the tenants had vacated the rental unit on August 31, 2020 and thus they no longer required an order of possession, as originally requested in their application for dispute resolution.

The landlords filed an application for dispute resolution on August 5, 2020 and a dispute resolution hearing was held at 11:00 AM on September 15, 2020. The landlords attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

It should be noted that a third party dialled into the hearing at approximately 11:02 AM, said “hi,” and then disconnected after I asked their name. TELUS Conferencing Solutions (a web-based teleconference management system used by arbitrators) indicated that the phone number of the third party matched the phone number of Tenant 1 as listed in the landlords’ application. The hearing concluded at approximately 11:10 AM without the third party having rejoined.

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. Are the landlords entitled to compensation for unpaid rent?
2. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on September 16, 2019 and ended on August 31, 2020. Monthly rent was \$1,400.00 and the tenants paid a security deposit of \$700.00 and a pet damage deposit of \$500.00. These deposits are currently held in trust by the landlords pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence by the landlords.

On July 20, 2020, the tenants gave notice to end the tenancy effective August 31, 2020. A copy of that notice was tendered into evidence. The tenants, though remaining in the rental unit until August 31, 2020, failed to pay the rent, testified the landlords.

In this application, the landlords seek compensation for that unpaid rent, seek to retain the entirety of the tenants' security and pet damage deposits in partial satisfaction of the claim for unpaid rent, and, seek to recover the application filing fee of \$100.00.

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.

Claim for Unpaid Rent

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 landlords testified, and provided documentary evidence to support their submission, that the tenants did not pay rent when it was due on August 1, 2020, and in fact they did not pay rent for August 2020 at any time. There is no evidence before me to find that the tenants had any right under the Act to not pay the rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation in the amount of \$1,400.00 for unpaid rent.

Claim for 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 another party. A successful party is usually entitled to recovery of the filing fee. As the landlords were successful, I grant them \$100.00.

Summary of Award, Retention of Deposits, and Monetary Order

The landlords are awarded a total of \$1,500.00.

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.” Because the tenancy ended on August 31, 2020 I therefore authorize and order the landlords to retain the tenants’ security and pet damage deposits of \$1,200.00 in partial satisfaction of the above-noted award.

A monetary Order in the amount of \$300.00, the balance of the award, is issued in conjunction with this Decision (to the landlords).

Further to the landlord M.B.’s question as to the serving of the monetary Order, service may be effected by any manner listed in [section 88](#) of the Act.

Conclusion

I grant the landlords a monetary order in the amount of \$300.00, 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.

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

Dated: September 15, 2020

Residential Tenancy Branch