



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNRL-S, MNDL-S, FFL

Introduction

In this dispute, the landlord seeks a monetary order for unpaid rent and for damages to the rental unit, pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). In addition, they seek an order of possession based on a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55 of the Act. The landlord also seeks recovery of the filing fee under section 72 of the Act.

It should be noted that at the outset of the hearing, the landlord explained to me that he would be pursuing a separate application for compensation related to any damage caused by the tenant to the rental unit, and, that he was not seeking an order of possession (the tenant has vacated the rental unit). As such, I will dismiss those two claims with leave to reapply.

The landlord filed an application for dispute resolution on August 20, 2020 and a dispute resolution hearing was held on October 5, 2020. The landlord attended the hearing and was given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses; the tenant did not attend the hearing.

Regarding service of the Notice of Dispute Resolution Proceeding package, the landlord testified that this was served by a police officer, in full view of a third-party witness (the landlord’s brother) in person to the tenant on August 24, 2020.

Based on this undisputed testimony I find that the tenant was served with the Notice of Dispute Resolution Proceeding in compliance with section 89 of the Act and with the *Rules of Procedure*.

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.

Issue

Is the landlord entitled to a monetary award for unpaid rent and for the filing fee?

Background and Evidence

By way of background, the tenancy began on July 1, 2019. Monthly rent, which is due on the first of the month, was \$2,900.00. A security deposit of \$1,450.00 is currently held in trust by the landlord pending the outcome of this application. The tenant no longer occupies the rental unit. In terms of evidence, a copy of the written tenancy agreement was submitted, along with a monetary order worksheet.

The landlord gave evidence that the tenant owes \$7,850.00 in unpaid rent for June, July, August and October 2020. (He obtained a monetary order for unpaid rent from September 2020 in a separate dispute resolution hearing.)

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 not pay the rent.

The landlord testified and provided documentary evidence (a Monetary Order Worksheet) to support his submission that the tenant has not paid rent since June 2020. Further, there is no evidence before me that the tenant had a right not to 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 landlord has met the onus of proving his claim for compensation for rent arrears in the amount of \$7,850.00.

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 his claim for reimbursement of the filing fee of \$100.00.

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.” As the tenant has moved out and the tenancy has now ended, I therefore order the landlord to retain the tenant’s security deposit of \$1,450.00 in partial satisfaction of the above-noted awards.

The balance of the award ($\$7,850.00 + \$100.00 - \$1,450.00 = \$6,500.00$) is issued as a monetary Order in conjunction with this Decision.

Conclusion

I HEREBY GRANT the landlord a monetary order in the amount of \$6,500.00, which must be served on the tenant. Should the tenant 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).

As noted during the hearing, the landlord may find it necessary to retain a skip tracing service in order to locate and serve the tenant with the Order.

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

Dated: October 5, 2020

Residential Tenancy Branch