



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On September 23, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, a Monetary Order for unpaid rent, and to recover the cost of the filing fee. On November 10, 2020, the Landlord submitted an Amendment to the Application to also request a Monetary Order for damages. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 45-minute hearing. The Landlord testified that they originally attempted to serve the Tenant with the Notice of Dispute Resolution Proceeding package (the “Notice”) by registered mail on September 30, 2020; however, soon learned that the Tenant had moved out of the rental unit and would not have received the package.

The Landlord applied to the Residential Tenancy Branch for substituted service and was authorized to use email to serve the Tenant the Notice. The Landlord testified that she sent the Notice to the Tenant on October 9, 2020, via email. I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Preliminary Matters

The Landlord stated that the Tenant had moved out of the rental unit and that there was no need to proceed with the issue of an Order of Possession. The Landlord withdrew her request for an Order of Possession for the rental unit.

The Landlord advised that she would like to proceed with the claim for damages to the rental unit; however, acknowledged that she had submitted the amendment and some related evidence within 14 days of the hearing. The Landlord withdrew her request for a Monetary Order for damages, with the intent to apply in the near future.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

If so, should the Landlord be authorized to apply the security deposit to her claim, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

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.

The Landlord provided affirmed testimony and stated that the tenancy began on July 23, 2019 and that a new Tenancy Agreement was established as of January 1, 2020, which was submitted as evidence. The month-to-month tenancy included rent of \$1,500.00, due on the first of each month. The Landlord collected and still holds a security deposit of \$750.00 and a pet damage deposit of \$750.00, for a total of \$1,500.00 worth of deposits.

The Landlord testified that the Tenant was issued a One Month Notice to End Tenancy on September 2, 2020 with an effective move-out date of October 31, 2020. The Tenant failed to pay the rent for September 2020, in the amount of \$1,500.00, and moved out of the rental unit on October 1, 2020.

The Landlord is requesting to be compensated for the unpaid rent and to apply the security deposit and pet damage deposit to the claim.

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 deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due and are in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a 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 compensation in the amount of \$1,500.00.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit and pet damage deposit in the amount of \$1,500.00, in full satisfaction of the monetary claim for the unpaid September 2020 rent.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$100.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,600.00, which includes \$1,500.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize

the Landlord to keep the Tenant's security and pet damage deposit of \$1,500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$100.00 in accordance with Section 67 of the Act. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 25, 2020

Residential Tenancy Branch