



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, OLC, OPR-DR-PP, OPRM-DR, FFL

Introduction

The tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") and an order that the landlord comply with the *Residential Tenancy Act* ("Act"), the *Residential Tenancy Regulation* ("Regulation"), and the tenancy agreement, pursuant to sections 46 and 62, respectively, of the Act. The landlord sought an order of possession for unpaid rent, a monetary order for unpaid rent, and recovery of the application filing fee, pursuant to sections 55, 67, and 72, respectively, of the Act.

The tenant filed their application for dispute resolution on September 5, 2020 and the landlord filed their application for dispute resolution on September 14, 2020 and a hearing was held before me on November 9, 2020. Both applications were heard at this hearing and this Decision shall address those applications together. Only the landlord's agent ("landlord") attended the hearing; she was given a full opportunity to be heard, present testimony and make submissions. The tenant did not attend, but I note that the tenant was contacted, by telephone, by the Residential Tenancy Branch on September 25, 2020 and was told of the hearing date and time. In addition, the Branch emailed a Notice of Dispute Resolution Proceeding to the tenant on that same date. I find that the tenant was aware of the hearing but chose not to attend.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order that the landlord comply with the Act, the Regulation, or the tenancy agreement?
3. Is the landlord entitled to an order of possession?
4. Is the landlord entitled to a monetary order for unpaid rent?
5. Is the landlord entitled to a monetary order for the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted which was relevant to determining the issues of this application. Further, only relevant evidence necessary to explain my decision is reproduced below.

The landlord testified that the tenant abandoned the rental unit on or about October 9, 2020. The rental unit was re-rented to a new tenant for November 1, 2020. As such, no order of possession is required.

The landlord gave evidence that the tenancy began November 1, 2019 and monthly rent, which was due on the first of the month, was \$1,700.00. The tenant paid a security deposit of \$837.50 which the landlord holds in trust pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that, and provided a rent ledger pertaining to the tenant and the tenancy, the tenant owes \$12,000.00 in rent arrears. In addition, the landlord submitted into evidence a copy of the tenant's rent repayment plan.

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.

1. Tenant's Application

As the tenant failed to attend the hearing, I dismiss their application in its entirety without leave to reapply.

2. Landlord's Application

Section 26 of the Act requires that a tenant pay rent in full when it is due. In this dispute, the tenant has not paid rent in many months, and total arrears are \$12,000.00.

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 their claim for compensation for unpaid rent in the amount of \$12,000.00.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the \$100.00 filing fee.

Pursuant to section 67 of the Act, then, I award the landlord a total of \$12,100.00.

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 tenancy has ended, I authorize the landlord to retain the tenant’s security deposit of \$837.50 in partial satisfaction of the above-noted award. The balance of the award – \$11,262.50 – is granted to the landlord by way of a monetary order which is issued in conjunction with this Decision.

Conclusion

I dismiss the tenant’s application without leave to reapply.

I grant the landlord a monetary order in the amount of \$11,262.50, which must be served on the tenant. If the tenant fails 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).

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

Dated: November 9, 2020

Residential Tenancy Branch