



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for dispute resolution on September 3, 2020 seeking compensation against his former tenant under sections 26 and 67 of the *Residential Tenancy Act* ("Act"). He also sought recovery of the filing fee under section 72 of the Act.

A dispute hearing was held on Tuesday, December 15, 2020 at 1:30 PM. The landlord and the landlord's friend, a witness, attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The tenant did not attend the hearing, which ended at 1:49 PM.

The landlord and his friend testified that the Notice of Dispute Resolution Proceeding package was sent by way of Canada Post registered mail on September 11, 2020. A copy of the tracking number was provided into evidence and the online Canada Post tracking website indicated that a Notice card was delivered to the tenant's address, but that he did not claim the package.

Based on the above-noted undisputed oral and documentary evidence, I find that the landlord served the Notice of Dispute Resolution Proceeding package on the tenant in compliance with the Act and the *Rules of Procedure*. It is worth noting that refusing a served document under the Act does not nullify or otherwise stop a legal proceeding.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to retain the security and pet damage deposits?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on November 1, 2019 and ended near the end of September 2020, when the tenant moved out. A written tenancy agreement was submitted into evidence and it indicates that monthly rent, which was due on the first of the month, was \$1,000.00. The tenant paid a security deposit of \$500.00 and a pet damage deposit of \$500.00; these deposits are held in trust by the landlord pending the outcome of this application.

The landlord testified that the tenant owes \$9,065.00 in rent arrears and \$283.91 in unpaid utilities. A copy of a statement of account showing the unpaid rent, and copies of hydro bills show the unpaid bills, were tendered into evidence. I went through the amounts claimed with the landlord to ensure that the amounts were accurate; he confirmed that they were correct.

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 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

By not paying the rent as required by the tenancy agreement, and as is required under section 26 of the Act, the tenant breached both the Act and the tenancy agreement. He must therefore compensate the landlord for the loss of rent that resulted. There is no evidence before me to find that the tenant had a right under the Act to not pay the rent.

I find, based on the undisputed oral and documentary evidence of the landlord, that the tenant must pay the landlord the rent arrears. In addition, as the tenant was required to pay for hydro under the tenancy agreement, he must compensate the landlord for the

amounts not paid. On this aspect of the landlord's claim I also find that the landlord's oral and documentary evidence proves the amounts owing. Finally, there is, it should be noted, little that a landlord can do to minimize this type of loss other than to pursue an application for dispute resolution under the Act.

As the landlord was successful in his application, I grant his claim for the \$100.00 application filing fee. The total amount awarded is therefore \$9,448.91.

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 such, I authorize the landlord to retain the tenant's security and pet damage deposits of \$1,000.00 in partial satisfaction of the above-noted award. The balance of the monetary award (\$8,448.91) is issued by way of a monetary order. This order is issued to the landlord in conjunction with this decision.

Conclusion

I hereby grant the landlord's application.

I hereby grant the landlord a monetary order in the amount of \$8,448.91, 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).

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

Dated: December 15, 2020

Residential Tenancy Branch