



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, FFL

Introduction

On September 16, 2020 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 25, 2020 the Dispute Resolution Package was sent to the Tenants, via registered mail. The Tenant with the initials "CB" acknowledged receiving the Application for Dispute Resolution sometime in early October of 2020.

The Landlord stated that on September 25, 2020 the evidence he submitted to the Residential Tenancy Branch was also sent to the Tenants, via registered mail. The Tenant with the initials "CB" acknowledged receiving this evidence, with the exception of the Monetary Order Worksheet. All of the evidence the Tenants acknowledged receiving was accepted as evidence for these proceedings.

As the Tenants did not acknowledge receiving the Monetary Order Worksheet, it was not accepted as evidence for these proceedings. I did not consider it necessary to adjourn the proceedings for the purposes of providing the Landlord with the opportunity to re-serve this document to the Tenants, as the document simply reiterates details of the claim that were provided on the Application for Dispute Resolution.

On November 15, 2020 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which the Landlord clarified that he was seeking compensation for all rent that was due for September of 2020. The Landlord stated that on November

15, 2020 this document was mailed to the Tenants. The Tenants acknowledged receipt of this document.

On December 23, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant with the initials "CB" stated that this evidence was personally served to the Landlord on December 23, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

During the hearing the Tenant with the initials "CB" stated that the Tenants believed their evidence regarding their concerns with the tenancy would be considered at these proceedings. It is apparent from evidence submitted by the Tenants that they believe they are entitled to compensation as a result of issues with the tenancy.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulate that a claim is limited to the issues identified on the Application for Dispute Resolution.

As the parties were advised during the hearing, only the issues on the Landlord's application will be considered at these proceedings. Specifically, the issues in dispute at these proceedings are limited to the Landlord's claim for unpaid rent, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

As the parties were advised during the hearing, the Tenants retain the right to file their own Application for Dispute Resolution seeking compensation they believe is due.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on March 15, 2020;

- the Tenants agreed to pay monthly rent of \$1,800.00 by the first day of each month;
- the Tenants paid a security deposit of \$900.00;
- on August 30, 2020 the Tenants sent the Landlord an email informing the Landlord they were ending the tenancy;
- the rent that was due on September 01, 2020 has not been paid;
- on September 03, 2020 the Landlord served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that they must vacate the rental unit by September 16, 2020; and
- the rental unit was vacated on September 15, 2020.

The Tenant with the initials “CB” stated that he cannot find a copy of the email the Tenants sent on August 30, 2020, although he believes the email informed the Landlord that they would be vacating the rental unit on September 15, 2020.

The Landlord stated that he has a copy of the email the Tenants sent on August 30, 2020, in which they declare they will be vacating the rental unit on September 30, 2020.

When the Tenants were asked if they had authority from the Residential Tenancy Branch or any other legal authority to withhold the rent that was due on September 01, 2020, they replied that they did not.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a tenancy agreement which required the Tenants to pay monthly rent of rent of \$1,800.00 by the first day of each month.

On the basis of the undisputed evidence, I find that neither party had ended the tenancy by September 01, 2020, and that the Tenants continued to occupy the rental unit after September 01, 2020.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. (Emphasis added)

Tenants have a right under the *Act* to withhold rent in limited circumstances. A tenant may withhold rent under certain circumstances, pursuant to section 33 of the *Act*, if the tenant has made emergency repairs. A tenant may withhold rent, pursuant to section

43 of the *Act*, if the tenant has paid a rent increase that does not comply with the *Act*. A tenant may withhold rent, pursuant to section 72 of the *Act*, if the director orders a landlord to pay money to a tenant.

A tenant does not have the right to arbitrarily withhold rent because they believe a landlord has breached the tenancy agreement or the *Act*.

In the absence of any evidence to establish that the Tenants had a right to withhold rent that was due on September 01, 2020, I find that they remain obligated to pay the rent for September, which is \$1,800.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,900.00, which includes \$1,800.00 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 retain the Tenants' security deposit of \$900.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,000.00. In the event the Tenant do not voluntarily comply with this Order, it may be served on the Tenants, 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 *Act*.

Dated: January 08, 2021

Residential Tenancy Branch