



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

The landlord applied for compensation for unpaid rent, and for the application filing fee, pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). The landlord and a close family member (who did a marvelous job acting as agent for the landlord in the hearing) attended the hearing on January 26, 2021 at 1:30 PM, which was held by teleconference. At no point during the hearing did the tenant attend.

The agent confirmed that the tenant was served with the Notice of Dispute Resolution Proceeding package by way of Canada Post registered mail. A copy of the tracking number and delivery receipt were in evidence. Based on this undisputed evidence I find that the tenant was served in compliance with the Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to compensation for the cost of the filing fee?

Background and Evidence

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

The tenancy began on May 1, 2020 and ended September 30, 2020. The tenancy was a fixed term from May 1 to August 31, 2020, converting to a month-to-month tenancy thereafter. Monthly rent was \$800.00 which was due on the first of the month. The tenant paid a \$400.00 security deposit which the landlord currently holds in trust. A copy of a written tenancy agreement was submitted in evidence.

The landlord's agent gave evidence, including a copy of a text message from the tenant dated September 16, 2020, that the tenant gave notice to end the tenancy effective September 30, 2020. As a result of the tenant's short notice – which was not in compliance with the Act – the landlord suffered a loss of rent for October 2020 for which they seek \$800.00 in compensation. A Monetary Order Worksheet was also submitted into evidence, as required by the *Rules of Procedure*.

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.

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. Under the tenancy agreement, the tenant was required to pay \$800.00 in rent on the first day of the month.

Section 45(1) of the Act sets out the legal requirements for a tenant ending a periodic, or month to month, tenancy:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the tenancy was a periodic tenancy as of September 2020. The tenant gave notice on September 16 to end the tenancy effective September 30, which, I find, is in breach of section 45(1) of the Act. As such, the earliest that the tenant was permitted to end the tenancy was October 31, 2020. It follows, then, that the tenant was, and is, liable for October's rent. The landlord provided oral and documentary evidence to support their submission that the tenant did not pay rent for October 2020.

Taking into consideration all of 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 in the amount of \$800.00 for unpaid rent.

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 recover the cost of the filing fee. As the applicant was successful, I grant their claim for the \$100.00 filing fee. A total of \$900.00 is therefore awarded to the landlord.

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 order that the landlord may retain the tenant’s security deposit of \$400.00 in partial satisfaction of the above-noted award.

The balance of the award is issued by way of a monetary order in the amount of \$500.00. This monetary order, which is issued in conjunction with the decision, must be served on the tenant by the landlord in order for it to be effective.

Conclusion

I grant the landlord’s application and authorize the landlord to retain the tenant’s security deposit of \$400.00.

I issue the landlord a monetary order of \$500.00, 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: January 26, 2021

Residential Tenancy Branch