



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the *Residential Tenancy Act* ("Act"), for compensation for unpaid rent under sections 26 and 67 of the Act, and for the cost of the application filing fee under section 72 of the Act. The landlord advised me at the start of the hearing that he had recently (on January 21, 2021) in another hearing obtained an order of possession; as such, I will only deal with the monetary claim.

The landlord and his agent attended the hearing on January 26, 2021, which was held by teleconference; the tenant did not attend. The landlord's agent gave evidence that the Notice of Dispute Resolution Proceeding package was served on the tenant by way of Canada Post registered mail and she provided the tracking number for this. Based on this undisputed evidence I find that the tenant was served in accordance with the Act.

Issues

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

The tenancy began on May 15, 2019 and monthly rent, which was due on the first of the month, was \$1,000.00. The tenant paid a security deposit of \$500.00. No written tenancy agreement was submitted into evidence.

The landlord testified that the tenant owes \$3,500.00 in rent arrears from October, November, December of 2020 and January 2021. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent long with a Monetary Order Worksheet were submitted in evidence.

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.

Claim for Unpaid Rent

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 documentary evidence to support his submission, that the tenant did not pay all of the rent for October 2020 and did not pay any rent for November 2020 through January 2021, inclusive. Rent arrears are proven in the amount of \$3,500.00. 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 his claim for \$3,500.00.

Claim for Application Filing Fee

As the landlord was successful in his application, I award \$100.00 to pay for the cost of the application filing fee, under section 72 of the Act.

Summary of Award, Retention of Security Deposit, and Monetary Order

A total award of \$3,600.00 is therefore granted 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 \$500.00 in partial satisfaction of the above-noted award.

The \$3,100.00 balance of the award is granted by way of a monetary order which is issued in conjunction with this Decision.

Conclusion

I grant the landlord's application.

I grant the landlord a monetary order in the amount of \$3,100.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed within 15 days of being served the order, 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