



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, OPC, FFL

Introduction

On November 24, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, a Monetary Order for unpaid rent and damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords attended the conference call hearing; however, the Tenant did not attend at any time during the 23-minute hearing. The Landlords testified that they personally served the Tenant with the Notice of Dispute Resolution Proceeding by hand delivering a copy to the Tenant on December 4, 2020. I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

The Landlords testified that the Tenant had moved out of the rental unit on December 15, 2020. As a result, the Landlords withdrew their application for an Order of Possession.

Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlords submitted a Tenancy Agreement and testified that the month-to-month tenancy began on January 21, 2013. The rent was \$700.00 and due on the first of each month. The Landlords collected and still hold a security deposit in the amount of \$350.00.

The Landlords provided undisputed testimony that the Tenant only paid half a months' rent for September 2020, leaving an unpaid amount of \$350.00. The Landlords stated that the Tenant failed to pay any rent for October and November 2020 and then moved out of the rental unit on December 15, 2020, without providing proper notice.

The Landlords claim that the Tenant failed to pay the full rent from September 2020 until he moved out on December 15, 2020. The Landlords testified that they have suffered a loss of unpaid rent in the amount of \$2,450.00.

The Landlords testified that the Tenant left the rental unit in a condition that required both cleaning and repair. The Landlords also claimed losses due to the cleaning of garbage from the backyard.

The Landlords did supply some pictures of the garbage in the backyard; however, did not provide pictures of the damaged rental unit, condition inspection reports or receipts for incurred costs.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other

party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the Landlords claimed damages to the rental unit and losses due to garbage in the back yard of the residential property. Although the Landlords stated they incurred losses, they failed to provide sufficient evidence to support the claim as they did not provide any condition inspection reports, pictures, estimates for repair or receipts for costs incurred, in accordance with section 67 of the Act. As such, I dismiss this part of the Landlord's claim without leave to reapply.

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 Landlords testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due and is in arrears for the amount claimed. I note that 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 Landlords have met the onus of proving their claim for compensation in the amount of \$2,450.00.

I find that the Landlords' Application has merit and that the Landlords are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenant's security deposit in the amount of \$350.00, in partial satisfaction of the monetary claim.

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlords in the amount of \$2,200.00.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$2,200.00. In the event that the Tenant does not comply with this Order, it may be served on the

Tenant, 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 *Residential Tenancy Act*.

Dated: February 16, 2021

Residential Tenancy Branch