



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1450 WEST GEORGIA INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

On November 6, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting 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 Landlord’s agents (referred to as the Landlord), one of the Tenants, the Tenant’s advocate and an interpreter for the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

The Tenant testified that she received the Landlord’s evidence package except for the Condition Inspection Report. The Tenant acknowledged that they did not submit any documentary or written evidence for this hearing.

Issue(s) to be Decided

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

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

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

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

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed to the following terms of the tenancy:

The 9-month, fixed-term tenancy began on September 1, 2019 and continued as a month-to-month tenancy. The rent was \$1,700.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$850.00.

The Landlord testified and submitted evidence to demonstrate that the Tenants had outstanding rent in the amount of \$3,700.00 by the time the tenancy ended at the end of October 2020.

The Landlord stated that the Tenants failed to pay rent on October 1, 2020 and on October 2, 2020, were subsequently served a 10 Day Notice to End Tenancy. The Landlord attempted to conduct a move-out inspection with the Tenants; however, they had moved out of the rental unit prior to the final inspection date proposed for October 31, 2020 and had not provided a forwarding address.

The Landlord stated that the Tenants only paid \$1,200.00 for each of the months from June, July, August and September 2020 and failed to pay any rent for October 2020. The Landlord is claiming a loss of rental income in the amount of \$3,700.00.

The Landlord testified that the Tenants did not clean the rental unit thoroughly when they vacated the unit, nor did they return one of the keys or the fob for the parking lot. The Landlord submitted a monetary order worksheet and a corresponding invoice from a property maintenance company that indicated the company cleaned the rental unit, removed junk and charged for the missing key/fob for a total of \$425.25. The Landlord provided photos of the areas and appliances that required cleaning and of items left behind from the Tenants.

The Landlord has also added a late fee for non-payment of October 2020 rent to their claim in the amount of \$25.00.

The Tenant testified that she had separated from her co-tenant and that she moved out of the rental unit on October 17, 2020.

The Tenant said that they only returned one key to the Landlord.

The Tenant confirmed that they were unable to pay the full amount of rent starting in June of 2020 and that they were \$500.00 short each month.

The Tenant confirmed that she did not pay the rent for October 2020.

The Tenant stated that she left the rental unit clean, but that Tenant RH was supposed to do some of the final cleaning and if he didn't, she was sorry.

Analysis

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 undisputed documentary evidence to support their submission, that the Tenants did not pay their rent when it was due on October 1, 2020 and are in arrears for the months of June through to September 2020. I note that there is no evidence before me that the Tenants had a right under the Act to not pay the October 2020 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 their claim for compensation of unpaid rent in the amount of \$3,700.00.

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.

I accept the Landlord's photos of the rental unit and that it required cleaning and the removal of the Tenants' items before new tenants were able to move in.

The parties provided some conflicting evidence about the move-in and move-out inspection report and whether the Tenants received a notice for a final move-out inspection notice. However, I accept the Landlord's undisputed testimony that the Tenants failed to provide notice as to when they vacated the rental unit and that the

Tenants did not provide a forwarding address to the Landlord; leaving the Landlord little choice to set up an appointment for a move-out inspection.

Based on the testimony of all parties and the documentary evidence from the Landlord, I find that the Landlord has established a monetary claim based on the Tenants failing to properly clean the rental unit and return all of the keys, pursuant to section 37 of the Act.

I find that the Landlord's Application has merit and that the Landlord is 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.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent, damages and the filing fee for this Application, and to retain the Tenants' security deposit:

| Item | Amount |
|---|-------------------|
| Unpaid rent from June to October 2020 | \$3,700.00 |
| Cleaning/junk removal/key replacement | 425.25 |
| Late fee/non-payment of October 2020 rent | 25.00 |
| Less Security Deposit | -850.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$3,400.25 |

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$3,400.25. In the event that the Tenants do not 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 *Residential Tenancy Act*.

Dated: March 03, 2021

Residential Tenancy Branch