



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 2, 2020, in which the Landlord requested monetary from the Tenants for unpaid rent and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 1, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent?

Background and Evidence

The Landlord's agent, N.S. testified as follows. The tenancy began August 1, 2020. Monthly rent was \$2,200.00 and the Tenants paid a security deposit of \$1,100.00.

N.S. stated that the rental property was sold and the new owners took possession of the rental unit November 1, 2020. The Tenants remained in the rental property following the sale.

The Tenants failed to pay the rent for October 2020 such that the sum of \$2,200.00 is outstanding.

The Tenant, R.M., testified as follows. She confirmed they moved out of the rental unit in November 2020 as they purchased their own home.

R.M. confirmed they did not pay the October 2020 rent. She stated that the reason for not paying the rent was that one of the bedrooms was uninhabitable due to flooding and water damage. She stated that they realized the room had water damage 12 days after moving into the rental unit and despite bringing this to the Landlord's attention, the Landlord failed to take any steps to remedy the situation. She stated that they believed their tenancy was devalued due to loss of use of this bedroom as well as the damage to their personal items.

Analysis

As discussed during the hearing a tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1)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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent. I was not provided any evidence which would support a finding that they incurred

expenses in the strict circumstances set forth with respect to emergency repairs (section 33 of the *Act*), nor did they make submissions in this regard. The Tenants confirmed that they withheld the October rent as they believed their tenancy had been devalued due to the loss of use of one of the bedrooms as well as damage to their personal effects. A tenant may not withhold rent as a means to compel a landlord to complete repairs. While they may have a claim for monetary compensation from the Landlord due to water ingress at the rental unit, they must make their own application for monetary compensation.

I therefore find that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*. The Landlord is entitled to monetary compensation in the amount of **\$2,200.00** for the unpaid rent for October 2020.

Conclusion

The Landlord's Application for monetary compensation from the Tenants for unpaid rent is granted. The Landlord is granted a Monetary Order in the amount of **\$2,200.00**. Should the Tenants not pay as ordered, the Landlord must serve the Monetary Order on the Tenants and may be filed in the B.C. Provincial Court (Small Claims Division).

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 01, 2021

Residential Tenancy Branch