



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S FFL

Introduction

The landlord seeks compensation from their former tenant for unpaid rent, pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks recovery of the filing fee pursuant to section 72 of the Act.

The landlord attended the teleconference hearing, which began at 1:30 PM on April 30, 2021. The tenant did not attend hearing, which ended at 1:49 PM.

I am satisfied based on the documentary and oral evidence that the tenant was served the Notice of Dispute Resolution Proceeding by registered mail in compliance with the Act and the *Rules of Procedure*. The registered mail tracking number was included in evidence and Canada Post's tracking website indicated that the mail was received on January 5, 2020. The landlord confirmed that the tenant was in the rental unit then.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 1, 2017 and legally ended on November 22, 2020 (after an order of possession and a monetary order were obtained from the Residential Tenancy Branch). However, the tenant did not comply with the order of possession and became an overholding tenant until early January 2021. Bailiffs had to remove the tenant after the landlord obtained a writ of possession from the Supreme Court.

Monthly rent was \$2,100.00 and was due on the first day of the month. The tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00. The landlord testified that these deposits currently remain in trust pending the outcome of this application. A copy of a written tenancy agreement was in evidence.

The landlord seeks \$2,100.00 for rent that was unpaid for December 2020. In addition, the landlord seeks \$1,100.00 for partial rent that was unpaid for April 2020 and remained unpaid under the terms of a rent repayment plan that was in place.

Submitted into evidence to support their case were: a completed Monetary Order Worksheet, several bank statements of the landlord, the previous arbitration decision and orders, two notices of rent increase, a copy of a rent repayment plan, and a registered mail receipt for the repayment plan.

Analysis

Section 26 of the Act requires a tenant to 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 their submission, that the tenant did not pay rent when it was due for April 2020 (in compliance with a rent repayment plan) and did not pay rent for December 2020. There is zero evidence before me to find that the tenant had any right under the Act to not pay their rent.

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.

Taking into consideration all of the undisputed 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 for unpaid rent in the amount of \$3,200.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded, I grant them \$100.00 in compensation to cover the cost of the filing fee.

Pursuant to section 67 of the Act, I award the landlord a total of \$3,300.00.

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 the tenancy ended in early January 2021 and is now over, I order that the landlord may retain the tenant’s security and pet damage deposits of \$2,000.00 in partial satisfaction of the above-noted award.

The balance of the amount owing – \$1,300.00 – is granted by a monetary order issued alongside this decision to the landlord. As explained to the landlord, they must serve a copy of this monetary order on the tenant to allow for court enforcement.

Conclusion

I HEREBY:

1. award the landlord a total of \$3,300.00 in compensation, pursuant to sections 67 and 72 of the Act;
2. authorize and order the landlord to retain the \$1,000.00 security deposit and the \$1,000.00 pet damage deposit, pursuant to section 38(4) of the Act; and,
3. grant the landlord a monetary order in the amount of \$1,300.00, a copy of 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: April 30, 2021

Residential Tenancy Branch