



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNRL, FFL

Introduction

The landlord sought an order of possession and a monetary order, pursuant to sections 46 and 55, and 67, respectively, of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of two filing fees pursuant to section 72 of the Act.

I note that the landlord made an application for dispute resolution on March 4, 2021 and another application for dispute resolution on March 19, 2021. Both applications were made for the same relief. It should also be noted that the landlord obtained an order of possession in a previous hearing, and as such only seeks compensation, in this matter.

The landlord's agent attended the hearing on June 11, 2021 at 11:00 AM. The tenants did not attend the hearing, which ended at 11:15 AM. I am satisfied based on evidence provided – which included two Canada Post Express Post tracking numbers for which the Canada Post website indicated both Notice of Dispute Resolution Proceeding packages were delivered to both tenants on March 26, 2021 – that the tenants were served in compliance with Act and the *Rules of Procedure*.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on August 1, 2020 and ended on March 30, 2021. Monthly rent was \$2,600.00 and the tenants paid a security deposit of \$1,300.00, which the landlord holds in trust pending the outcome of these applications.

The landlord testified that the tenants owe a total of \$10,400.00 in rent arrears. A copy of a 10 Day Notice to End Tenancy for Unpaid Rent, along with a document titled "Missed Payment Records," were submitted by the landlord in support of the claim.

Analysis

Section 26 of the Act states that

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.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act states that

Without limiting the general authority in section 62 (3) [. . .], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

In this dispute, the landlord's undisputed oral and documentary evidence persuades me to find that the tenants did not pay rent for December 2020, January, February, and March 2021. Arrears are \$10,400.00. This is the amount I award to the landlord.

As the landlord was successful in their applications, I further award them \$200.00 (\$100.00 for each of the applications) to cover the cost of the filing fees, pursuant to section 72 of the Act. Thus, the total awarded is \$10,600.00.

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 such, I order that the landlord may retain the tenants' security deposit of \$1,300.00 in partial satisfaction of the above-noted award.

The balance of the award (\$9,300.00) is issued by way of a monetary order. This order is issued in conjunction with this decision, to the landlord.

Conclusion

The landlord's applications are granted.

Pursuant to section 67 of the Act, I hereby grant the landlord a \$9,300.00 monetary order, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claim Court).

Pursuant to section 38(4)(b) of the Act, I hereby authorize the landlord to retain the tenants' security deposit of \$1,300.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 11, 2021

Residential Tenancy Branch