



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTHVIEW PROPERTY MGMT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 14, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent and/or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on November 16, 2013, by registered mail, to the address where D.B. resides. Canada Post receipts were provided in the Landlord's evidence.

The Landlord stated that K.B. was the Tenant who occupied the rental unit and D.B. was his mother who resided at the address to which both hearing packages were sent. D.B. signed the tenancy agreement as guarantor to the agreement. The Landlord advised that K.B. did not provide her with a forwarding address and she did not know where K.B. had moved to when he vacated the unit.

Section 89(1) of the *Residential Tenancy Act* stipulates that service for documents to a tenant, if sent registered mail, must be sent to the address where the tenant resides. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been served with the Notice of Dispute Resolution documents, at the address where they reside, in accordance with section 89(1) of the Act. Therefore, I find that the request for a Monetary Order against both Respondents must be amended to include only D.B. who is deemed to have been

properly served with Notice of this Proceeding. As the second Tenant, K.B. has not been properly served the Application for Dispute Resolution; the monetary claim against K.B. is dismissed without leave to reapply.

Based on the submissions of the Landlord I find that D.B. is deemed served notice of this proceeding on November 21, 2013, five days after it was mailed, in accordance with section 90 of the Act and I proceeded in the Tenants' absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2013 and was set to expire on February 28, 2014. The Tenants were required to pay rent of \$1,375.00 on the first of each month and on February 15, 2013 the Tenants paid \$687.50 as the security deposit. Both parties attended and signed the move-in condition inspection report form on February 27, 2013.

The Landlord testified that at the end of September 2013 she received the Tenants' notice to end their tenancy effective October 31, 2013. She began advertising the unit right away and was able to enter into a new tenancy agreement that began on November 1, 2013.

The Landlord advised that the Tenants continued to occupy the rental unit during October 2013; however, their October 1, 2013 preauthorized rent payment did not go through. She is seeking compensation for the unpaid rent for October 2013 in the amount of \$1,375.00.

The Landlord submitted evidence which included e-mails that indicate she attempted to schedule a move out inspection for the end of October. It was during that e-mail communication that the Tenants informed her that they had already moved out of the unit, leaving the keys inside. The Tenants refused to attend the move out inspection and left the unit requiring the following: general cleaning, carpet cleaning, recycling debris removal, and with burnt out light bulbs. The Landlord pointed to the receipt provided in her evidence in support of her claim for \$370.00 for cleaning and maintenance costs.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 26 of the Act provides that a tenant must pay rent in accordance with the tenancy agreement.

In this case, the Tenants continued to occupy and have possession of the unit for the month of October 2013 and they did not pay rent, as their payment did not clear the bank. Therefore, I find the Landlord has met the burden of proof to establish their loss, and I award them compensation for the unpaid October 2013 rent in the amount of **\$1,375.00**.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged.

Based on the aforementioned I find the Tenants have breached section 37(2) of the Act, leaving the rental unit unclean and requiring some general maintenance. Accordingly, I award the Landlord cleaning and maintenance charges of **\$370.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid October 2013 Rent	\$1,375.00
Cleaning & Maintenance	370.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,795.00
LESS: Security Deposit \$687.50 + Interest 0.00	<u>-687.50</u>
Offset amount due to the Landlord	<u>\$1,107.50</u>

Conclusion

The Landlord has been awarded a Monetary Order against D.B. in the amount of **\$1,107.50**. This Order is legally binding and must be served upon the Tenant D.B. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The monetary claim against K.B. is dismissed, without leave to reapply.

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 10, 2014

Residential Tenancy Branch

