



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MALMAR
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes OPR, OPB, MNR, MNDC, RR, O, FF

Introduction

This hearing was reconvened after an adjournment of the original hearing scheduled for December 3, 2014. This hearing dealt with applications from Landlord KM (the landlord) and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants named the landlord and Landlord M as Respondents in their application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other unspecified damages.

The landlord's agent ("the landlord") attended the January 19, 2015 hearing (the second hearing) and was given a full opportunity to be heard, to present sworn testimony, and to make further submissions. The tenants did not attend the second hearing. The second hearing scheduled for 1:30 p.m. continued until 1:45 p.m.

At the previous hearing, the tenant who attended that hearing sought and was granted an adjournment to address the contradictory evidence of the parties.

This tenancy ended on November 30, 2014, by which time the tenants had vacated the rental unit. During the course of the first hearing, the landlord withdrew his application to end this tenancy on the basis of the 10 Day Notice. The landlord's application to obtain an Order of Possession was withdrawn at that hearing. The landlord testified, at this second hearing, that the unit has been re-rented.

The service of all documents was considered at the first hearing. As was noted in my Interim Decision of December 15, 2014, all documents, including the Notice to End Tenancy and both party's Dispute Resolution packages, were found to be served within the requirements of the *Residential Tenancy Act*.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in the second hearing of January 19, 2015, I order the tenants' application dismissed without liberty to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

As stated in the Interim Decision, this month to month tenancy began on September 27, 2014 and continued until November 30, 2014. The rental amount was \$700.00 per month payable on the thirty-first of each month. The tenancy ended November 30, 2014. The landlord continues to hold a security deposit in the amount of \$350.00 paid on September 27, 2014 by the tenants.

The landlord testified that, after the tenants failed to pay rent, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant appearing at the original hearing ("the tenant JJ") testified that he believed the landlord had turned off the water to their rental unit on several occasions. He claims, as well, that the landlord did not

offer proper snow removal to allow residents of the residential property, including himself and his co-tenant to access the property. The tenant JJ also testified, at the original hearing, that he felt the rental unit was not healthy or sanitary but testified that both tenants could find no other place to rent.

To the contrary, the landlord testified that the rental unit was in reasonable condition when the tenants moved in. He testified that there was no garbage inside the unit as the tenants claimed and that the carpet was in reasonable condition. He testified that, with the ongoing construction, the water was turned off on occasion. The landlord testified that the snow was removed when he was practically able to do so.

The tenant made claims of inappropriate behaviour by the landlord at the original hearing. However, the tenants did not attend the second hearing to support these claims after seeking an adjournment to provide this evidence.

Analysis

I find that the landlords are entitled to receive an order for unpaid rent in November 2014. The landlords re-rented the unit as soon as practicable. The evidence of an outstanding rental amount is undisputed. I am issuing the attached monetary order that includes the landlords' application for \$700.00 in unpaid rent for November 2014.

The landlord testified that he continues to hold a security deposit of \$350.00 plus any interest from September 27, 2014 to the date of this final decision for this tenancy. There is no interest payable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for November 2014	\$700.00
Less Security Deposit	-350.00

Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$400.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: January 26, 2015

Residential Tenancy Branch

