



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on September 29, 2014 seeking to obtain a Monetary Order for unpaid rent or Utilities; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlords who gave affirmed testimony. The Landlords provided documentary evidence that each respondent was served notice of this application and this hearing and copies of their evidence by registered mail on October 7, 2014. Canada Post tracking information confirms that each respondent signed for their respective package on October 8, 2014. Based on the aforementioned, I found that each respondent was sufficiently served notice of this proceeding, in accordance with section 89 of the Act; and I proceeded in absence of the respondents.

Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlords submitted evidence that a female Tenant, C.H. and a male tenant J.M.; who was not named as a respondent to this dispute, entered into a written fixed term tenancy agreement that began on June 1, 2013. The tenancy agreement indicated that the fixed term was scheduled to end on June 31, 2014 [sic] and would continue on a month to month basis unless another fixed term agreement was entered into. As per the tenancy agreement, rent of \$1,450.00 was due on or before the first of each month and on November 15, 2012 the Tenants paid \$675.00 as the security deposit plus \$675.00 as the pet deposit.

The Landlords submitted evidence that the Tenants had short paid their November 1, 2013 rent by \$250.00 and the Landlords had agreed to deduct the short payment from the pet deposit. The Tenant, C.H. later repaid \$100.00 towards the pet deposit leaving the Landlords holding the \$675.00 security deposit plus \$525.00 pet deposit (\$675.00 - \$250.00 + \$100.00).

The Landlords testified that while they were out of the Country the two Tenants separated and the male tenant moved out. The Landlords said the female Tenant, C.H.

agreed to take full responsibility for the rent and they had agreed to allow her to bring in a roommate who dealt directly with the Tenant. The Landlords asserted that they were later told that the roommate situation did not work out and that the Tenant had moved in a new male Tenant, S.J., who wanted to be added to the tenancy agreement. Despite the Landlords collecting S.J. personal information, no changes were made to the written tenancy agreement and no new tenancy agreement was entered into listing C.H. and S.J. as co-tenants.

The Landlords submitted that they had filed their application to recover the costs of the unpaid municipal water utility bills. The tenancy agreement required the Tenants to pay utilities as water, gas, and hydro were not included in rent. They pointed to the copies of the bills provided in evidence and argued that the bills listed the Tenants' names and the Landlords' names as property owner. The bills were sent directly to the rental unit, to the Tenants, and remained unpaid. On March 6, 2014, the municipality transferred the outstanding balance of \$1,275.53 to their property tax account and began billing the Tenants again for the usage in 2014. Quarterly bills were issued and not paid for the following invoices: January - March 31, 2014 for \$320.23 plus April to June 30, 2014 for \$373.78.

The Landlords testified that they had attempted to work out a payment plan with the Tenants and when that failed they came to the Residential Tenancy Branch. The Landlords now seek to recover the unpaid municipal utilities of \$1,969.54 (\$1,275.53 + \$320.23 + \$373.78).

Analysis

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person, who is not listed as a tenant on the tenancy agreement, to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find the respondent, S.J., to this dispute does not meet the definition of a tenant; rather he is an occupant. Thus, there is not a tenancy agreement in place between the Landlords and S.J., to which the *Residential Tenancy Act* applies. That being said, there is a tenancy agreement in place that lists the other respondent, C.H. as a co-tenant.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any

debts or damages relating to the tenancy. That means a landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Based on the above, I conclude that this matter may proceed against C.H., who was properly served with notice of this application. The application against S.J. is hereby dismissed, without leave to reapply.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The tenancy agreement did not include utilities (water, electricity, heat, cable vision) in the rent. The municipal utility bills listed both co-tenants' name and the bills were mailed directly to the rental unit address. The Tenants did not pay the municipal utilities, as required by their tenancy agreement, and the undisputed evidence proves the Landlords suffer a loss of \$1,979.23 as they were required to pay the outstanding amounts.

Based on the foregoing, I find the Landlords provided sufficient evidence to support their application and I award them monetary compensation for unpaid utilities in the amount of **\$1,979.23**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – I find that the Landlords are 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 Tenant's security and pet deposits plus interest as follows:

Unpaid utilities	\$1,979.23
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,029.23
LESS: Pet Deposit \$525.00 + Interest 0.00	-525.00
LESS: Security Deposit \$675.00 + Interest 0.00	<u>-675.00</u>
Offset amount due to the Landlords	<u>\$ 829.23</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$829.23**. This Order is legally binding and must be served upon the Tenant. 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 application against S.J. is HEREBY 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: May 08, 2015

Residential Tenancy Branch

