



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JAme suppress

DECISION

Dispute codes OPR MNR RP FF O

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;

Tenant:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an “other” unspecified remedy.
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed service of the respective applications for dispute resolution including the evidence on file.

Preliminary Issue – Amendment to Landlord’s Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord’s agent testified that the tenants had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent in the amount of \$1900.00 that was payable on March 1, 2017 as well as outstanding utilities for January and February 2017. Although the tenants did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent and/or utilities nor vacated the rental unit. I therefore allowed the landlord’s request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent and/or utilities?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Should the landlord be ordered to make repairs to the rental unit pursuant to section 32?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on October 20, 2016 with a monthly rent of \$1900.00 payable on the 1st day of each month. The tenant paid a security deposit of \$950.00 at the start of the tenancy which the landlord continues to hold. As per the tenancy agreement, the tenants were responsible for 100% of the utilities; however, shortly after the parties reached a verbal agreement that the tenants would only be responsible for 70% of the utilities as the basement of the home was rented to other tenants.

The landlord's agent testified that on February 8, 2017 the tenant was served with the 10 day Notice to End Tenancy for unpaid rent or utilities by registered mail. The landlord testified that the tenant did not pay the outstanding amount of rent and utilities as indicated in the Notice within five days of service of the Notice.

The tenants acknowledged service of the 10 day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenants submit they withheld the rent due to the condition of the rental unit. The tenants allege they were attempting to have the landlord make repairs to the rental unit over a period of four months.

The landlord's monetary claim is for outstanding rent and utilities in the amount of \$4972.86. The landlord testified that this includes unpaid rent for the months of February and March 2017 and outstanding utilities bills from November 2016, December 2016, January 2017 and February 2017. The landlord submitted an account statement and copies of utilities bills detailing the amounts outstanding based upon 70% of total bill amounts.

The tenants acknowledged that rent and utilities had not been paid as claimed by the landlord; however, argued that they only agreed to pay 70% of the utilities based upon two or three persons residing in the basement unit versus 4 persons.

Analysis

I am satisfied that the tenants were deemed served with the 10 day Notice to End Tenancy on February 13, 2017, five days after its mailing, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the "corrected" effective date of the Notice, February 23, 2017.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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.

I find that the tenant was obligated to pay monthly rent in the amount of \$1900.00 plus 70% of the utilities but failed to pay rent and utilities as claimed by the landlord. The tenants did not have a right under the Act to deduct or withhold the rent or utilities. I accept the landlord's claim for outstanding rent and utilities in the amount of \$4972.86.

The landlord continues to hold a security deposit of \$950.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4022.86.

As the tenancy has ended, the tenants' application for repairs to the rental unit is dismissed as it is now a moot point. As the tenants application is dismissed, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4022.86. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 09, 2017

Residential Tenancy Branch