



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing (1 representative for the landlord and 2 tenants). All parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The landlord's representative ("the landlord") testified that he served the tenants with the landlord's Application for Dispute Resolution with notice of this hearing ("ADR") by registered mail on February 22, 2017. The tenants both acknowledged receipt of the landlord's ADR and evidence package submitted for this hearing. The tenants did not make any documentary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

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

Background and Evidence

This tenancy began on October 15, 2016 as a 6 month fixed term lease that may continue as a month to month tenancy. After the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2017, the tenants vacated the rental unit. The landlord continues to hold the \$400.00 security deposit paid by the tenants at the outset of the tenancy (October 8, 2016). While the residential tenancy agreement submitted as

evidence references a \$400.00 pet damage deposit, both parties (landlord's representative and both tenants) at this hearing testified that the pet damage deposit was never paid by the tenants.

The parties agreed that the tenants vacated the rental unit on February 18, 2017, that they provided their forwarding address at that time and that the landlord did not conduct nor offer to conduct a condition inspection at the start or at the end of the tenancy. The landlord has applied to recover the unpaid rent in the amount of \$800.00 as indicated on the landlord's 10 Day Notice issued to the tenants. The landlord also applied to recover the \$100.00 filing fee for this application and unpaid utilities totalling \$172.82.

The landlord testified that he issued a 10 Day Notice to End Tenancy when the tenants failed to pay \$800.00 monthly rent that was due on February 15, 2017. The landlord did not seek further compensation for the additional 3 days that the tenants resided in the rental unit beyond the 15th of the month when rent was due. However, he does seek to recover the unpaid utilities for the period of October 15, 2016 (move-in) to January 15, 2017 (prior to move-out) as indicated on the utility bills submitted for this hearing. The electricity bill for this period was \$445.50 and the gas bill for this period was \$73.03. The electricity bill cycle began at October 5, 2016 – an additional 10 days beyond when the tenants were in the unit. The landlord sought 1/3 of these bills: \$172.82.

The tenants both testified at this hearing. Neither tenant disputed that they withheld the final rent payment due January 15, 2017. Tenant PB testified that he withheld the rent because he was advised to do so. Tenant PB testified that the landlord failed to make a number of repairs, including a repair to the front entrance door. The tenants both testified that they were told that the rental unit was illegally rented. The tenants both testified that the landlord threw out belongings that they had left behind and that they had a variety of issues with both the landlord and the upstairs neighbours.

The tenants did not dispute that they failed to pay the utility bills. They stated that, since the landlord had provided bills that dated back to October 5, 2016 and they moved in October 15, 2016, the landlord was required to reduce their bill accordingly. They testified that the landlord failed to calculate the adjusted amount for them and consequently they did not pay the outstanding utility bill amount.

Analysis

I accept the undisputed sworn testimony of the landlord that the tenants did not paid rent for January 15, 2017 to February 14, 2015. Not only is this evidence undisputed but

both tenants verified that they withheld rent for this period. Based on all of the evidence before me, I find that the tenants failed to pay the January 15, 2017 to February 14, 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. I note that the tenants attended this hearing to bring forward issues that related to the tenancy itself but that the tenants argued that they were not required to pay rent because of the landlords' failure to make repairs.

Section 26(1) of the *Act* establishes 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." The tenants resided in the rental unit until February 18, 2017 and failed to pay their rent when due as required by the Act: they failed to pay for the month from January 15, 2017 to February 14, 2017 and did not vacate the residence until 4 days after that rent payment would have been effective. Therefore, the **landlord is entitled to the unpaid rent in the amount of \$800.00 from the tenants.**

I find that the landlord is also entitled to receive a monetary award for unpaid utilities. The tenants both acknowledged that they were responsible to pay utilities and they both acknowledged that they did not pay the utilities. One tenant testified that, as it was the landlord's responsibility to calculate the correct amount, the tenants refused to pay any amount. I accept the claim of the landlord that utilities remain unpaid. I accept the admissions of the tenants that they did not pay utilities in accordance with the Act. I find that the documentary evidence submitted by the landlord (utility bills) sufficiently shows that the tenants are responsible for 1/3 of the utility bills from October 15, 2016 to January 14, 2017. I have calculated the amounts owed by the tenants based on the number of days they resided in the rental unit from October 15, 2016 to February 18, 2017. I find that the **landlord is entitled to recover two utility bill amounts of \$131.08 and \$24.34 for a total of \$155.42.**

The landlord testified that he continues to hold a security deposit amount of \$400.00 plus any interest from the outset of the tenancy to the date of this decision for this tenancy. Based on the testimony at the hearing, I note that, pursuant to section 38, the landlord may have extinguished his right to retain the tenants' security deposit based on his failure to provide an opportunity for condition inspections and a report of the condition of the residence. However, section 72 of the Act allows the landlord to retain the security deposit towards a monetary award.

I will allow the landlord to retain the tenants' \$400.00 security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act. [There is no interest payable for this period.]

As the landlord was successful in his application, the landlord is entitled to recover his \$100.00 filing fee.

Conclusion

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

Rental Arrears for Jan 15, 2017 to Feb 14, 2017	\$800.00
Unpaid Utilities bills	\$155.42
Less Security Deposit	-400.00
Total Monetary Award to Landlord	\$555.42

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: July 25, 2017

Residential Tenancy Branch