



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD SS FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on February 24, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to retain all or part of the pet damage deposit or security deposit;
- an order allowing the Landlord to serve documents in a different way than required by the *Act*; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and provided affirmed testimony. The Tenants did not attend the hearing.

The Landlord testified the Application package was served on K.H. by registered mail on February 24, 2017. The Application package was mailed to the address provided by the K.H. during the tenancy application process. The Landlord read the tracking number aloud during the hearing and testified the package was accepted on February 28, 2018. I find the Application package was received by K.H. on that date.

In addition, the Landlord testified the Application package was served on J.R. by registered mail on February 24, 2017. The Application package was mailed to the work address provided by J.R. during the tenancy application process. The Landlord read the tracking number aloud during the hearing and testified the package was accepted on February 27, 2017. Pursuant to section 71 of the *Act*, I find that J.R. was sufficiently served with the Application package for the purposes of the *Act*, on February 27, 2017.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified during the hearing that the Tenants did not move into the rental unit. Accordingly, he sought and obtained new tenants, who moved into the rental unit on December 1, 2016. The Landlord confirmed that a copy of the new tenancy agreement was submitted with the Application. However, it did not appear in my paper file. Accordingly, the Landlord was provided with the opportunity to submit a copy of the new tenancy agreement to my attention by fax, which he did.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to keep all or part of the security deposit or pet damage deposit in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirms that a fixed-term tenancy agreement was signed by the parties on October 15, 2016. The term of the tenancy agreement was from November 1, 2016 to October 31, 2017. Rent in the amount of \$1,600.00 per month was due on the 31st day of each month. The Tenants paid \$400.00 towards the requested security deposit, which the Landlord holds.

The Landlord testified the Tenants did not move into the rental unit. As a result, he did not receive rent for the month of November 2016, and was unable to re-rent the unit to new tenants until December 1, 2016. Further, the Landlord testified he was only able to re-rent the unit for \$1,500.00 per month and sought to recover the difference for the remainder of the fixed term. As noted above, a copy of the subsequent tenancy agreement was submitted after the hearing. It confirmed a new fixed-term tenancy from December 1, 2016 to October 31, 2017, with rent due in the amount of \$1,500.00 per month.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 16 of the *Act* states:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[Reproduced as written.]

Section 26 of the *Act* confirms a tenant's obligation to pay rent when due under a tenancy agreement.

In this case, I find parties rights and obligations took effect when the parties entered into the tenancy agreement on October 15, 2016. Although the Tenants never occupied the rental unit, rent for November 2016 became due under the tenancy agreement but was not paid. I find the Tenants were obligated to pay rent for the month of November 2016 in the amount of \$1,600.00, and that the Landlord is entitled to a monetary award in this amount.

The Landlord also claimed the difference in rent for the duration of the fixed term. He testified the Tenants agreed to pay \$1,600.00 per month, whereas the new tenants are paying \$1,500.00 per month. Accordingly, I find the Landlord has demonstrated a loss of \$1,100.00 in rent for the 11-month period from December 1, 2016 to October 31, 2017, and I grant the Landlord a monetary award in this amount.

Having been successful, I grant the Landlord an award of \$100.00 as recovery of the filing fee paid to make the Application, and order that the Landlord is permitted to retain the security deposit of \$400.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,400.00, which has been calculated as follows:

Claim	Amount
Unpaid rent (November 1-30, 2016):	\$1,600.00
Lost rent (December 1, 2016 to October 31, 2017):	\$1,100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
TOTAL:	\$2,400.00

Conclusion

The Landlord is granted a monetary order in the amount of \$2,400.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 27, 2017

Residential Tenancy Branch