



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 the Landlord's Application for Dispute Resolution, dated July 10, 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; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenant also attended the hearing and was assisted by her father, K.V. All in attendance provided a solemn affirmation.

The Landlord testified the Application package was served on the Tenant by registered mail. Although K.V. denied it was sent by registered mail, he acknowledged receipt on behalf of the Tenant. In addition, the Landlord testified that a documentary evidence package, which was received at the Residential Tenancy Branch on January 12, 2018, was served on the Tenant by registered mail. On behalf of the Tenant, K.V. denied receipt; the Landlord also acknowledged it was not received by the Tenant.

In addition, the Tenant submitted a documentary evidence package in response to the Application, which was received at the Residential Tenancy Branch on January 20, 2018. Although K.V. advised that a copy was left in the Landlord's mailbox, the Landlord denied receipt.

The above issues with respect to service of documentary evidence were discussed with the parties during the hearing. The possibility of an adjournment was presented to the parties. However, both parties agreed to proceed with the hearing in reliance on the evidence submitted to the Residential Tenancy Branch, even though both parties claimed they had not received the evidence. Accordingly, the hearing proceeded with the parties' agreement.

The parties were provided with a full 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on or about December 1, 2015. The Landlord testified that he sold the property on April 14, 2017. However, the Tenant remained in the rental unit until September 30, 2017. The Tenant testified that rent for her unit was \$2,100.00, but that this amount was reduced to \$2,000.00 on account of the estimated utility consumption by the other tenant in the rental property. This arrangement was also described in the Tenant's written submissions.

The Landlord testified the Tenant withheld rent in the amount of \$1,970.00 in or about February 2016.

On behalf of the Tenant, K.V. acknowledged that this amount of rent was withheld. He testified that utility usage by the other tenant living at the rental property was disproportionate, did not reflect actual consumption, and should not have been paid by the Tenant. He testified the other tenant was wasteful with respect to utility consumption and would heat his unit by leaving the over door open. K.V. also submitted that it was unconscionable for the Landlord to require the Tenant to pay the utilities of another tenant, contrary to Policy Guideline #1.

Analysis

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

Section 26(1) of the *Act* states:

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.

[Reproduced as written.]

In this case, the Tenant confirmed that rent was withheld as a result of a disagreement about the payment of utilities in the rental property. However, this disagreement did not entitle the Tenant to withhold rent. Rather, the appropriate recourse was for the Tenant to pay rent when due and seek redress by making an application for dispute resolution. Policy Guideline #1 states the following under Shared Utility Service:

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

[Reproduced as written.]

In light of the above, and pursuant to section 67 of the *Act*, I find the Tenant did not pay rent when due and did not have a right under the *Act* to deduct all or a portion of the rent. Therefore, the Landlord is entitled to a monetary order in the amount of \$2,070.00, which is comprised of \$1,970.00 in unpaid rent plus \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted a monetary order in the amount of \$2,070.00. The monetary 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: January 29, 2018

Residential Tenancy Branch