



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avina Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR
Landlord: OPR MNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- cancel the 10 Day Notice for Unpaid rent or utilities (the “Notice”)

The Landlord cross applied for the following relief:

- an order of possession based on the Notice; and,
- a monetary order for unpaid rent or utilities.

After reviewing the file before me, and the records at our office, I note that the Tenant applied to cancel the Notice on November 14, 2017. A Notice of Hearing was provided to her indicating that her hearing would be held on February 2, 2018, at 11:00 am. The Landlord cross applied on December 7, 2017. On the Landlord’s Notice of Hearing, it indicated that his application would be crossed with the Tenant’s to be heard at the same time. However, the Landlord’s Notice of Hearing indicated that the hearing time would be at 9:00 am on February 2, 2017. This was an administrative error, as the actual hearing time for both applications was set for 11:00 am on February 2, 2018.

At 11:00 am on February 2, 2018, when I called into the hearing, the Landlord was present. However, the Tenant was not. The Landlord stated that he also called in at 9:00 am, since that was the time that he was told the hearing would be (as per his Notice of Hearing). However, upon review of the telephone conference call records, I note that the Landlord was the only person who called into the hearing during the 9:00 am time slot on February 2, 2018. Ultimately, the Landlord called into both hearing times, 9:00 am and 11:00 am, given that he had the Tenant’s Notice of Hearing for

11:00 am, and he also had his Notice of Hearing for 9:00 am. The Tenant didn't call into either hearing time.

The Landlord testified that he served the Tenant with a copy of the application package, the Notice of Hearing, and his evidence on December 8, 2017, by registered mail sent to the rental unit. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received this package on December 13, 2017, the 5th day after its registered mailing.

On the Landlord's Notice of Hearing, it indicated the hearing was to be held at 9:00 am on February 2, 2018. As stated above, the only person who called into that hearing was the Landlord and he was ready to proceed with any and all of the issues identified on the cross application, as listed above.

After considering the totality of the situation before me, I note that the Tenant failed to attend either hearing time indicated on either of the Notice of Hearings. The Tenant was made aware of both of these hearing times, and was made aware of the claims made against her. Considering the Landlord attended both hearing times, I allow all of the issues listed above to be heard at the same time, at 11:00 am on February 2, 2018.

At the hearing, the Landlord stated that the Tenant moved out of the rental unit at the end of December 2017. Given this information, I dismiss the Tenant's application to cancel the Notice, and I also dismiss the Landlord's application for an order of possession. The only remaining issue in this cross application is the Landlord's application to recover unpaid rent and utilities.

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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$725.00 is due on the first of each month. The Landlord stated that he has not received rent for November or December of 2017.

The Landlord stated that the Tenant has also failed to pay him for electrical utilities that were under his name. These utilities were not included in rent, as per the tenancy agreement provided into evidence. The Landlord stated that the Tenant owes him \$238.66 in unpaid BC Hydro utility bills for the period from June 2017 – October 2017. The Landlord submitted a copy of these bills into evidence.

The Landlord stated that he told the Tenant multiple times that she still owed rent and utilities, but she avoided paying him and just moved out.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a monetary order for unpaid rent and utilities, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$1,450.00 in rent for November and December of 2017. Further, I find there is sufficient evidence before me to demonstrate that the Tenant owes \$238.66 in unpaid utilities.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the Tenant to repay the \$100.

In summary, I find the Landlord is entitled to a monetary order in the amount of \$1,788.66

Conclusion

The Tenant's application is dismissed in full, without leave to reapply. The Landlord's application for an order of possession is dismissed, without leave to reapply.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,788.66**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: February 02, 2018

Residential Tenancy Branch