



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, FFL

Introduction

This decision pertains to the landlord's application for dispute resolution made on June 14, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks an order of possession of the rental unit for unpaid rent and utilities pursuant to section 46 and 55 of the Act, a monetary order for unpaid rent pursuant to section 67 of the Act, and a monetary order for recovery of the filing fee pursuant to section 72(1) of the Act.

Two agents for the landlord (referred to as "landlord" herein) and the tenant's guarantor attended the hearing before me, were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The tenant did not attend.

The landlord testified that they served the tenant with the Notice of Dispute Resolution Proceeding package on June 15, 2018, by way of Canada Post registered mail. I find that the tenant was served with the Notice of Dispute Resolution Proceeding package pursuant to section 89(2)(b) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent and utilities?
2. Is the landlord entitled to a monetary order for unpaid rent and utilities?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?
4. If the landlord is entitled to one or both monetary orders, are they entitled to retain the tenant's security deposit in full or partial satisfaction of that claim?

Background and Evidence

The tenant started her tenancy on February 1, 2017. The tenancy was a fixed term tenancy ending on January 31, 2018, which continued as a month to month tenancy thereafter. Monthly rent is \$1,500.00, which is due on the first of the month. The tenant paid a security deposit in the amount of \$750.00. In addition, the tenant pays for electricity and a parking fee (the “utilities”). A copy of the tenancy agreement was submitted into evidence

The landlord testified that the tenant stopped paying rent and utilities in June 2018 and on June 2, 2018, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”). The Notice, a copy of which was submitted into evidence, was served by being posted on the tenant’s door, and service was witnessed. The Notice stated an effective date of June 12, 2018.

The landlord testified that they are seeking a monetary order for unpaid rent and utilities in the amount of \$3,461.08. The landlord amended their application for the amount originally sought, and submitted into evidence a copy of an accounts receivable ledger showing the amounts owed.

Finally, the landlord testified that the tenant no longer resides in the rental unit and as such, they no longer seek an order of possession of the rental unit.

Seven minutes into the hearing, the tenant’s guarantor called into the hearing. I explained to her that as she was not a party to the tenancy agreement, any decision or monetary order that I made would be against the tenant, and not her, and that I do not have jurisdiction to resolve disputes between landlords and guarantors. I further explained that should the landlord wish to claim against her for unpaid rent, that they would have to pursue their claim through other means.

Analysis

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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute it. The landlord provided oral and documentary evidence to establish that the tenant did

not pay rent or utilities when due. Further, I have no evidence before to find that the tenant applied for dispute resolution. Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent and utilities.

Pursuant to section 67 of the Act, I find that the landlord is entitled to a monetary award of \$3,461.08 for unpaid rent and utilities. I order that the entire amount of the security deposit held (\$750.00) be applied to the award granted to the landlord. Further, I grant a monetary award of \$100.00 for recovery of the filing fee.

Given the above, I grant the landlord a monetary order in the amount of \$2,811.08 ($\$3,461.08 + \$100.00 - \$750.00 = \$2,811.08$).

Conclusion

The landlord is granted a monetary order in the amount of \$2,811.08. This order must be served on the tenant and 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 Act.

Dated: August 10, 2018

Residential Tenancy Branch