



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL FFL

Introduction

This hearing dealt with the landlords' application pursuant to the Residential Tenancy Act (the "**Act**") for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:44 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The applicants attended the hearing, and their counsel made submissions on their behalf. The applicants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the applicants, their counsel, and I were the only ones who had called into this teleconference.

The applicants' counsel stated that the tenant was served the notice of dispute resolution package via registered mail on August 26 or 27, 2018 to the forwarding address the tenant provided the applicants at the end of tenancy. Counsel was unable to provide me with a Canada Post tracking number, but stated that his records indicated the address and method of service used. I am satisfied that the tenant was served with notice of dispute resolution package. In accordance with sections 89 and 90 of the Act, I find that the tenant is deemed served on September 1, 2018, five days after counsel sent it by registered mail.

Preliminary Issue

It was the applicants' evidence was that the parties to the tenancy agreement were the tenant and applicant "VG", and that applicant "KJ" was not a party to the agreement.

Accordingly, landlord "KJ" cannot be entitled to any of the rent funds (as entitled to rent arises from the tenant's obligation to pay rent contained in the tenancy agreement).

While applicant "KJ" may have acted in such a manner that causes him to fall under the definition of "landlord", as set out in the Act, for some purposes of the Act, those purposes do not include receiving rent under the tenancy agreement. Only applicant "VG" is entitled to receive rent under the tenancy agreement.

Accordingly, applicant "KJ" is not properly a party to this application. Pursuant to section 64(3) of the Act, I order that this application be amended to remove applicant "KJ" as a party.

The claim of applicant "VG" (hereinafter the "**Landlord**"), is unaffected by this order.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent; and
- recover their filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Landlord's counsel submitted that an oral tenancy agreement existed between the Landlord and the tenant. The tenant agreed to rent a suite with its own kitchen and bathroom in a property owned by the Landlord and applicant "KJ". The monthly rent was \$575, to be paid on the first of each month. The tenancy commenced November 1, 2017 and ended on March 31, 2018.

The tenant provided the Landlord with a security deposit of \$250, which was returned to him at the end of the tenancy.

The tenant provided the Landlord with a cheque for March rent in the amount of \$575 on March 1, 2018. The Landlord was unable to cash the cheque as they were notified by their bank that the tenant's account had insufficient funds.

The Landlord's counsel submitted that the tenant has not provided the Landlord with any funds in satisfaction of March rent.

Analysis

A tenancy agreement, whether oral or written, obligates the parties to abide by its terms. A failure to do so will constitute a breach of the agreement, and a party may apply to the Residential Tenancy Branch to enforce their rights under that agreement.

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1)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.

In the case at hand, the tenant agreed to pay monthly rent in the amount of \$575. After considering the Landlord's evidence, I find that the tenant breached both the tenancy agreement and the Act by failing to provide the landlords with \$575 for the rent of March 2018. I accept the Landlord's evidence that the cheque they received on March 1, 2018 from the tenant "bounced", and that she has not received any further funds from the tenant representing payment towards the amount owing.

As the Landlord was entitled to receive payments from the tenant, and as the tenant failed to make such a payment for March, 2018, I find that the Landlord is entitled to a monetary order against the tenant in the amount of \$575.

As the Landlord was successful in her application, I also find that she is entitled to recover the \$100 filing fee paid for this application, pursuant to section 72 of the Act.

Conclusion

Pursuant to section 64(3) of the Act, I order that this application be amended to remove applicant "KJ" as a party.

Pursuant to sections 67 and 72 of the Act, I find that the Landlord is entitled to a monetary order in the amount of \$675 for unpaid rent and the recovery of the \$100 filing fee for this application. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an Order of, the Small Claims Division 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: January 21, 2019

Residential Tenancy Branch