



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, OPR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 18, 2019 (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;
- a monetary order for compensation;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

Preliminary Matters

The Landlord made an amendment to his Application on March 18, 2019 to increase the monetary amount of his claim from \$7,900.00 to \$8,650.00. At the start of the hearing, the parties agreed that the tenancy ended on March 31, 2019 at which point the Tenant vacated the rental unit and returned the keys. As such, the Landlord is no longer seeking an order of possession and wanted to remove his claim for unpaid rent and utilities for April 2019.

The Tenant as well as the Landlord and the Landlord's Agent R.G. attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenant by registered mail on February 24, 2019. The Landlord stated that he served the amendment to his Application to the Tenant by registered mail on March 19, 2019. The Tenant confirmed receipt of both mailings. Pursuant to Sections

88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any evidence in preparation for this hearing.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2018. Rent in the amount of \$1,975.00 was due to be paid to the Landlord each month. The Tenant provided the Landlord with a cheque for the security deposit; however, the cheque was returned as NSF, therefore the Tenant did not provide the Landlord with a security deposit. The tenancy ended on March 31, 2019. The parties did not complete a written tenancy agreement.

The Landlord testified that the Tenant has failed to pay rent for December 2018, February 2019 and March 2019. The Landlord testified that the Tenant paid rent late in January 2019 which the Landlord applied to the outstanding rent owed for December 2018. The Landlord is seeking \$5,925.00 for unpaid rent.

The Landlord testified that the Tenant was also required to pay the Landlord for utilities in the amount of \$150.00 each month. The Landlord stated that the Tenant has not paid utilities in December 2018, January, February and March 2019. The Landlord is seeking \$600.00 for unpaid utilities.

The Landlord testified that he served the Tenant in person with the 10 Day Notice dated February 4, 2019, with an effective date of February 14, 2019. The Tenant confirmed receipt. The Landlord submitted a copy of the 10 Day Notice in support.

In response, the Tenant agreed that she did not pay rent for February and March 2019. The Tenant stated that she paid the Landlord three separate cash payments throughout December 2018 and confirmed that she paid January 2019 rent late. The Landlord stated that he did not receive any payments throughout December 2018 aside from a cheque that was returned NSF.

The Tenant agreed that she has not paid any utilities to the Landlord. The Tenant stated that her understanding was that she only owed \$100.00 per month for utilities. The Landlord and R.G. testified that the verbal agreement was that the utilities would be \$150.00; however, during the hearing, the Landlord stated that he would accept \$100.00 for each month.

Analysis

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

Section 26 of the Act states that a Tenant must pay the 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 this Act to deduct all or a portion of the rent.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

I find that the Landlord served the Tenant in person with the 10 Day Notice dated February 4, 2019, with an effective vacancy date of February 14, 2019. The Tenant confirmed receipt on the same day. Pursuant to section 88 of the Act, I find the above document was sufficiently served for the purposes of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until February 9, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution. The Tenant did neither.

The Landlord is seeking \$5,925.00 for unpaid rent for December 2018, February and March 2019. The Tenant agrees that she didn't pay rent in February and March 2019; however, stated that she made three separate cash payments throughout December 2018. I find that the Tenant provided insufficient evidence to demonstrate that these payments were made to the Landlord. As such, I find that the Landlord has established an entitlement to a monetary amount of \$5,925.00 for unpaid rent.

The Landlord is claiming \$600.00 for unpaid utilities for December 2018, January, February and March 2019. The Tenant agreed that she failed to pay utilities to the Landlord; however, was under the impression that the parties had agreed that the utilities would only be \$100.00 each month. As such, the Tenant agreed that she is responsible to pay \$400.00 to the Landlord for utilities. I find that the Landlord provided insufficient evidence to demonstrate that the Tenant owed \$150.00 instead of \$100.00 for utilities. As the Landlord stated during the hearing that he would accept the \$100.00 per month, I find that the Landlord is entitled to a monetary amount of \$400.00 for unpaid utilities.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$6,425.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
<i>Unpaid rent:</i>	<i>\$5,925.00</i>
<i>Unpaid utilities:</i>	<i>\$400.00</i>
<i>Filing fee:</i>	<i>\$100.00</i>
<i>TOTAL:</i>	<i>\$6,425.00</i>

Conclusion

The Tenant has breached the *Act*, by not paying rent and utilities to the Landlord. The Landlord is granted a monetary order in the amount of \$6,425.00. The monetary order

should be served to the Tenant as soon as possible 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 Residential Tenancy Act.

Dated: April 11, 2019

Residential Tenancy Branch