



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on December 27, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30 PM on April 15, 2019 as a teleconference hearing. Only the Landlords appeared and they provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 27 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords made an ex parte application on December 27, 2018 for an order for substituted service pursuant to section 71(1) of the *Act*. The Landlords were successful in their application and were granted an order for substituted service, allowing the Landlords to serve the Tenant their Application and documentary evidence package to the Tenant's e-mail address.

The Landlords testified that they served their Application and documentary evidence package to the Tenant by email on December 29, 2018. According to the substitute service decision, documents served in this manner are deemed to have been

sufficiently served to the Tenant for the purposes of the *Act*, three days after the date that the e-mail is sent by the Landlords to the Tenant. The Landlords provided a copy of the email in support. The Landlords testified that the Tenant confirmed receipt via text message. I find the above documents were sufficiently served pursuant to Section 71 and 90 of the *Act*.

The Landlords 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. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with 72 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified that the tenancy began on September 1, 2016. Rent in the amount of \$2,200.00 was due to be paid to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,100.00 which the Landlords continue to hold. The Landlord stated that the Tenancy ended on November 26, 2018. The Landlords stated that the Tenant has not yet provided the Landlords with her forwarding address. The Landlords submitted a copy of the tenancy agreement in support.

The Landlords testified the Tenant did not pay rent in the amount of \$2,200.00 when due in October or November 2018. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 18, 2018 (the "10 Day Notice") with an effective vacancy date of November 27, 2018. The Landlords stated that the 10 Day Notice was served on the Tenant by text message on November 18, 2018. The Landlords submitted a copy of the text message exchange between the

parties which confirms that the Tenant received the 10 Day Notice on the same date. The Landlords submitted a copy of the 10 Day Notice in support.

The Landlords testified that the Tenant vacated the rental unit on November 26, 2018. As noted above, the Tenant did not attend the hearing to dispute the Landlords evidence.

Analysis

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

The Landlords served the 10 Day Notice on the Tenant by text message on November 18, 2018. The Landlords submitted the text message conversation between the parties confirming that the Tenant received the 10 Day Notice by text on the same date. Pursuant to section 71 of the *Act*, I find the Tenant was sufficiently served for the purposes of the *Act*, and received the 10 Day Notice on November 18, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until November 23, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an Application for dispute resolution. The Landlords testified the Tenant has not paid rent for October or November 2018 and has since vacated the rental unit on November 26, 2018.

There is no evidence before me to find that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

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

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.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$4,400.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$3,400.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,100.00)
TOTAL:	\$3,400.00

Conclusion

The Tenant breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted a monetary order in the amount of \$3,400.00. 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 17, 2019

Residential Tenancy Branch